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2

Oklahoma (Ter.) Laws, Statutes, etc

Law C.
1890

THE STATUTES OF OKLAHOMA

1890.

Compiled under the supervision and direction of Robert Martin,
Secretary of the Territory,

—BY—

WILL T. LITTLE, L. G. PITMAN and R. J. BARKER,

—FROM—

The Laws Passed by the First Legislative Assembly of the Territory.

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1891.

Laws of
Oklahoma
2

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AUTHENTICATION.

OFFICE OF THE SECRETARY.

UNITED STATES OF AMERICA,
TERRITORY OF OKLAHOMA.

I, ROBERT MARTIN, Secretary of the Territory of Oklahoma, hereby certify that the following embrace all the laws of said Territory as the same were passed by the first session of the Legislative Assembly, commencing on the 27th day of August, A. D., 1890, ánd ending on the 24th day of December, A. D., 1890, as the same appears from the enrolled bills now on file in my office.

ROBERT MARTIN,
Secretary of the Territory.

PREFACE.

The Secretary of the Territory, on behalf of the general government, appointed Will T. Little to codify and compile the laws enacted by the first session of the Legislative Assembly of the Territory of Oklahoma.

The Legislative Assembly of Oklahoma Territory, by an Act Approved December 24th, 1890, authorized the Secretary of the Territory to appoint one member from the Council and one from the House to, under his supervision, codify and compile the laws passed at the first session of that body. In compliance with this Act the Secretary appointed L. G. Pitman from the Council and R. J. Barker from the House.

These three appointees were thus authorized to act as the compiling committee.

Oklahoma's first Legislature convened on the 27th day of August, 1890, bringing into immediate association the local prejudice and legislative preferences of nearly every state and territory within this Government. Most intimate with life of parent state, each member championed some of its statutory provisions. These circumstances, augmented by contention born of urban ambition and varying natural conditions, retarded legislation, alienating men otherwise of one mind.

Resulting from necessary and natural delay, the session's closing days witnessed an avalanche of legislation, precluding consideration in detail. Overworked clerks were relieved by some inexperienced assistants whose labors culminated in grave and irreparable injury to enrolled bills. Unreasonable speed was demanded. Technical accuracy vanished. Legal sense was often lost. Construction was thrown in medley. Punctuation ran riot.

Rather than faulting any one for these misfortunes, they should be accepted as naturally resulting from a most extraordinary situation. Working until the compilation was well nigh complete, under the general govern-

ment's order to have the statutes in book form prior to January 25th, 1891, the committee found it necessary not only to labor night and day, but to furnish copy to the publisher in some cases before "code," "chapter" and "article," as appearing in matter adopted from other statutes, had been so changed as to accurately correspond with this compilation.

Ten months work was limited to thirty days, and the committee has no apologies to offer, being conscious of having done the best in its power, and feeling the public should appreciate any compilation amounting to more than mere session laws. Before indexing began, an extension of time was granted, but it came too late, the volume then being nearly all in print.

The hasty index system adopted, though not in any degree satisfactory to the compilers, became an absolute necessity owing to an absence of proper provisions for remuneration, and a lack of time that all intelligent persons will readily understand.

WILL T. LITTLE,
L. G. PITMAN,
R. J. BARKER

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DECLARATION OF INDEPENDENCE.

[*Unanimously Passed by the Congress of the Thirteen United States of America, July 4, 1776.*]

(1) WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; and that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature,—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have

returned to the people at large, for their exercise; the state remaining, in the meantime, exposed to all the dangers of invasion without and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for the naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of land.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harrass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas, to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments,

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends or brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by re-

peated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

NEW HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.

Sam'l Adams,
John Adams,
Rob't Treat Paine,
Elbridge Gerry.

RHODE ISLAND.

Step. Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Sam'el Huntington,
Wm. Williams,
Oliver Wolcott.

NEW YORK.

Wm. Floyd,
Phil. Livingston,
Fran's Lewis,
Lewis Morris,

NEW JERSY.

Rich'd Stockton,
Jno. Whitherspoon,
Fra's Hopkinson,
John Hart.
Abra. Clark.

PENNSYLVANIA.

Rob't Morris,
Benjamin Rush.
Benja. Franklin,
John Morton,
Geo. Clymer,
Jas. Smith,
Geo. Taylor,
James Wilson,
Geo. Ross.

DELAWARE.

Cæsar Rodney,
Geo. Read,
Tho. M'Kean,

MARYLAND.

Samuel Chase,
Wm. Paca,
Thos. Stone.
Charles Carroll, of Carrollton.

VIRGINIA.

Geo. Wythe,
Richard Henry Lee,
Th. Jefferson,
Benja. Harrison.
Tho. Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA.

Wm. Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.

Edward Rutledge,
Thos. Heyward, jun'r,
Thomas Lynch, jun'r,
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
Geo Walton.

ARTICLES OF CONFEDERATION.

To all to whom these presents shall come, we the undersigned Delegates of the States affixed to our names, send greeting:—

In Congress July 9, 1778

(2) WHEREAS the Delegates of the United States of America in Congress assembled did on the 15th day of November in the year of our Lord 1777 and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, in the words following, viz.

Article of Confederation

Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolona, South-Carolina, and Georgia.*

ARTICLE I.

Style of the Confederacy

The Stile of this confederacy shall be "The United States of America"

ARTICLE II.

Rights retained by the States

Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the united states, in congress assembled.

ARTICLE III.

Objects of the Confederacy

The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE IV.

Mutual privileges of the free inhabitants of the several States

The better to secure and perpetuate mutual friendship and intercourse among the people of the different states of this union the free inhabitants of each of these states, paupers, vagabonds, and fugitives from Justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states, and the people of each state shall have free ingress and regress to and any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal

of property imported into any state, to any other state, of which the Owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them.

Persons guilty of crimes to be given up.

If any person guilty of, or charged with treason, felony or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Faith to be given to the acts of each State.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

ARTICLE V.

Delegates to be annually appointed, etc.

For the more convenient management of the general interests of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November, in every year, with a power reserved to each state, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year.

Each State may recall its delegates, etc.

Numbor and capacity of delegates.

No state shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in a term of six years; nor shall any person, being a delegate, be capable of holding any office under the united states, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each state to maintain its own delegates

Each state shall maintain its own delegates in any meeting of the states, and while they act as members of the committee of the states.

Each State to have one vote.

In determining questions in the united states, in congress assembled, each state shall have one vote.

Privileges of Members of Congress

Freedom of speech and debate in congress shall not be impeached or questioned in any Court, or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

ARTICLE VI.

No State to negotiate with foreign powers

No state without the Consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, prince or state; nor shall any person holding any office of profit or trust under the united states, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the united states in congress assembled, or any of them, grant any title of nobility.

Persons holding offices not to accept presents.

Congress not to grant letters of nobility.

Treaties between two or more states prohibited.

No two or more states shall enter into any treaty, confederation

or alliance whatever between them, without the consent of the united states in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No states to lay interfering imposts or duties.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the united states in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

Regulations respecting naval and military establishments—the militia, etc

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state except in certain cases, to engage in war, nor to grant commissions to armed vessels, etc

No state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the united states in congress assembled can be consulted: nor shall any state grant commissions to any ships or vessels of war, nor letters of mark of reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the united states in congress assembled, unless such state shall be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the united states in congress assembled shall determine otherwise.

ARTICLE VII.

Officers of the land force under the rank of colonel, to be appointed by the States respectively

When land-forces are raised by any state for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ARTICLE VIII.

All charges of war, etc., to be defrayed out of a common treasury.

All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in

proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the united states in congress assembled, shall from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the united states in congress assembled.

The treasury to be supplied by the contribution of the States.

Taxes to be laid and levied by the States respectively.

ARTICLE IX.

The united states in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the 6th article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subject to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the united states shall be divided or appropriated—of granting letters of marque and reprisal in time of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

Powers of the Congress.

Members of Congress not to be judges of admiralty courts

The united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties their lawful agents, who shall then be directed to oppoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen: and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without

Congress the last resort for deciding disputes between States.

Mode in which Congress shall exercise its authority for deciding disputes between States

Judges to be appointed by lot.

Opinion of a majority of judges to prevail; etc.

showing reasons, which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce the sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to his best judgment, without favor, affection or hope of reward," provided also that no state shall be deprived of territory for the benefit of the United States.

Judgment to be final and conclusive.

Sentence and proceedings to be lodged among the acts of Congress.

Oath to be taken by the judges

Proviso.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdiction as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the united states, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

Congress also to determine controversies concerning private rights of soil.

The united states in congress asembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states —fixing the standard of weights and measures throughout the United States— regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated— establishing or regulating post-offices from one state to another, throughout all the united states, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of said office — appointing all officers of the land forces in the service of the united states, excepting regimental officers — appointing all the officers of the naval forces and commissioning all officers whatever in the service of the united states — making rules for the government and regulation of the said land and naval forces, and directing their operations.

Further powers of Congress

The united states in congress assembled shall have authority to appoint a committee, to sit in recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state: and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction — to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years: to as-

Congress to appoint a committee of the States.

Additional powers of Congress enumerated

certain the necessary sums of Money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted, — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state: which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and clothe, arm and equip them in a soldier like manner, at the expense of the united states: and the officers and men, so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the united states in congress assembled. But if the united states in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number than its quota thereof, such extra number shall be raised, offered, clothed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

Congress not to exercise the powers enumerated unless by the votes of nine States, nor to determine any question, except for adjournment from day to day, without the sanction of a majority of the States

The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the united states, or any of them, nor emit bills nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of any army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

Regulations concerning adjournment, and other proceedings of Congress.

The Congress of the united states shall have power to adjourn to any time within the year, and to any place within the united states, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliance or military opperations, as in their judgement require secrecy: and the yeas and nays of the delegates of each state on any question shall be entered upon the Journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE X

Committee of the States may be vested with certain powers

The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite.

ARTICLE XI.

Canada may be admitted into the confederacy

Canada acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII.

Payment of debts assumed

All bills of credit emitted, monies borrowed and debts contracted by or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged.

ARTICLE XIII.

Obligations imposed by the confederacy.

Every state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation is submitted to them. And the Articles of this con-

Union perpetual, etc

federation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we

Ratification

the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united states in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of

Pennsylvania the 9th Day of July in the Year our Lord, 1778, and in the third year of the Independence of America.

Signatures to act of confederation.

On the part and behalf of the state of New Hampshire.—Josiah Bartlett, John Wentworth, jun. (August 8th, 1778).*

On the part and behalf of the state of Massachusetts-Bay.—John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, Samuel Holten.

On the part and behalf of the state of Rhode-Island and Providence Plantations.—William Ellery, Henry Marchant, John Collins.

On the part and behalf of the state of Connecticut.—Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adam.

On the part and behalf of the state of New-York.—Jas. Duane, Fras. Lewis, William Duer, Gouvr. Morris.

On the part and behalf of the state of New-Jersey, November 26th, 1778.—Jno. Witherspoon, Nathl. Scudder.

On the part and behalf of the state of Pennsylvania.—Robt. Morris, Daniel Roberdeau, Jona. Bayard Smith, William Clingan, Joseph Reed (22d July, 1778).

On the part and behalf of the state of Delaware.—Tho. M'Kean, Feb. 12, 1779, John Dickinson, May 5, 1779, Nicholas Van Dyke.

On the part and behalf of the state of Maryland.—John Hanson, March 1st, 1781, Daniel Carroll, March 1st, 1781.

On the part and behalf of the state of Virginia.—Richard Henry Lee, John Banister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee.

On the part and behalf of the state of North-Carolina.—John Penn, July 21st, 1778, Corns Harnett, Jno. Williams.

On the part and behalf of the state of South-Carolina.—Henry Laurens, William Henry Drayton, Jno. Matthews, Richd. Hutson, Thos. Heyward, jun.

On the part and behalf of the state of Georgia.—Jno. Walton, 24th July, 1778, Edwd. Telfair, Edwd. Langworthy.

*From the circumstances of Delegates from the same state having signed the articles of confederation at different times, as appears by the dates, it is probable they affixed their names as they happened to be present in Congress, after they had been authorized by their constituents.

CONSTITUTION

OF THE

United States of America.

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and posterity, do ordain and establish this CONSTITUTION FOR THE UNITED STATES OF AMERICA.

ARTICLE I.

OF THE LEGISLATIVE POWERS

SEC 1. Legislative power vested in congress.
2. Members of house, how chosen; qualifications of representative, taxes; apportionment; enumeration, when taken; vacancies.
3. Senators, number of; classes; qualifications, powers of senate, impeachment and judgment.
4 Election of members, annual meeting.
5. Elections, adjournments, rules; adjournment.
SEC. 6. Compensation; exemption from arrest, etc., shall not hold certain offices.
7. Revenue bill shall originate in house, veto, signature of bills and resolutions.
8. The powers of congress.
9 Tax on migration; habeas corpus; limitations on powers. Titles of nobility
10. Limitations on the powers of the states.

Legislative power.

(3) SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Members of House, how chosen

(4) SECTION 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

Apportionment.

The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. Enumeration.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies. Vacancies.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment. Impeachment.

(5) SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six years, and each Senator shall have one vote. Members of Senate.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies. Apportionment and vacancies.

No person shall be a Senator who shall not have attained to to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen. Qualifications.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided. President of Senate.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States. Officers.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose they, shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present. Impeachments.

Judgment in cases of impeachment shall not exceed further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law. Judgment.

(6) SECTION 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the Elections for members.

places of choosing Senators. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Quorum adjournment.

(7) SECTION 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Rules.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Journal yeas and nays.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Compensation.

(8) SECTION 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States.

Exemptions.

They shall in all cases, except treason, felony, and breach of peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Shall not hold certain offices.

No Senator or Representative shall, during the time for which he was elected, be oppointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Revenue bills

(9) SECTION 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Approval and signing of bills

Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States. If he approve he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had

Veto.

signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill. Certain resolutions, etc.

(10) SECTION 8. The Congress shall have power— Powers of Congress.

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war; grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of officers and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of

forts, magazines, arsenals, dock-yards, or other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Limitations on the powers of Congress.

(11) SECTION 9. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Limitations on the powers of the States.

(12) Section 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or contract with another State, or with a foreign power, or engage in war, unless actually invaded or such imminent danger as will not admit of delay.

ARTICLE II.

OF THE EXECUTIVE.

SEC. 1. Executive power vested in president; term of office; manner of election, qualification; oath.
2. His powers and duties.
SEC. 3. The same; may convene house, etc.
4. Removal from office, of president and other officers.

(13) SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Executive power vested in president, term of office, manner of election, qualifications, oath.

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.] 1

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President; and such officer shall act accordingly until the disability be removed or a President shall be elected. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

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1 This clause is modified by the 12th amendment.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear, (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

His powers and duties.

(14) SECTION 2. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the malitia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

The same, may convene houses, etc.

(14 *a*) SECTION 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he may think proper, he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Removal from office, of president and other officers.

(15) SECTION 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

OF THE JUDICIARY.

SEC. 1. Vested in supreme and inferior courts; term of office, of judges, compensation.
SEC. 2. Judicial power, extent of. Trial by jury.
3. Treason, punishment, etc.

Vested in supreme and inferior courts, term of office, of judges, compensation.

(16) SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their

services a compensation, which shall not be diminished during their continuance in office.

Judicial power, extent of. trial by jury.

(17) SECTION 2. The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting embassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State or the citizens thereof, and foreign States, citizens, or subjects.

In all cases affecting embassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as Congress may by law have directed.

Treason, punishment, etc.

(18) SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

MISCELLANEOUS PROVISIONS.

SEC. 1. Faith and credit to public acts
2. Privileges of the citizens of the several states; extradition.
SEC. 3. New states; Power of congress over property, etc.
4 Shall guaranty republican form of government.

Faith and credit to public acts, etc.

(19) SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Privileges of citizens of each State.

(20) SECTION 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws

thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

New States, proviso, property of U. S.

(21) SECTION 3. New States may be admitted by the Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

Form of government

(22) SECTION 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V.

Amendments, ratification of.

(23) The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

Debts, etc., supreme law

(24) All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United states.

ARTICLE VII.

(25) The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same. Ratification

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

Go. WASHINGTON, *Presid't*,
And Deputy from Virginia.

Attest: WILLIAM JACKSON, *Secretary*.

AMENDMENTS TO THE CONSTITUTION.

Proposed by Congress and ratified by the Legislatures of the several States, pursuant to the fifth article of the Original Constitution.

(26) ARTICLE I. Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances. Freedom of speech, etc.

(27) ARTICLE II. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Militia

(28) ARTICLE III. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law. Soldiers

(29) ARTICLE IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. Search or seizure

(30) ARTICLE V. No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in the time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation. Grand jury, jeopardy; due process of law

(31) ARTICLE VI. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained Trial, jury, witnesses

by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Trial by jury in civil cases

(32) ARTICLE VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

Bail

(33) ARTICLE VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Other rights.

(34) ARTICLE IX. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Powers reserved to the States.

(35) ARTICLE X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Extent of judicial power.

(36) ARTICLE XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Election of President

(37) ARTICLE XII. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no

person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Slavery.

(38) ARTICLE XIII. SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.[1]

SECTION 2. Congress shall have the power to enforce this article by appropriate legislation.

Citizens.

(39) ARTICLE XIV.[2] SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Representatives

(40) SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Number of.

Who not to be Senator or Representative

(41) SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President or Vice-President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

Certain debts, etc., void.

(42) SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing of insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume to pay any debt or obliga-

[1] Declared adopted by the secretary of state on the 18th day of February, 1865.
[2] Fourteenth amendment, promulgated by the secretary of state, 28th of July, 1868.

tion incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims, shall be held illegal and void.

(43) SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Suffrage.

ARTICLE XV. SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude.

(43*a*) SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Declared adopted by the Secretary of State, March 30, 1870.

TREATY

Ceding Louisiana to the United States, Which Included Oklahoma and the Indian Territory.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC.

SEC. 1. Retrocession of Louisiana by Spain to France.
1. Cession from France to the United States
2. Objects included in the cession.
3. Inhabitants to be incorporated into the Union—upon what principles.
4. Ceded Territory, how received from Spain and transmitted to the United States.
5. Military Posts—when surrendered
6. Indian Treaties to be executed by the United States.
7 Vessels of France and Spain, admitted into the ports of the ceded territory for twelve years, on what terms.
SEC. 7. No other nation entitled to the same privilege for twelve years.
7. Objects of indulgence to French and Spanish vessels.
8. After twelve years, ships of France, how treated
9. A convention for payment of debts to citizens of the United States to be ratified herewith.
9. Another convention relative to a definitive rule between the parties to be ratified at the same time.
10. Ratifications to be exchanged in six months.

The President of the United States of America, and the first consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemiaire, an 9 (30th September, 1800) relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid the 27th of October, 1795, between his catholic majesty and the said United States, and willing to strengthen the union and friendship which at the time of said convention, was happily re-established between the two nations, have respectively named their plenipotentiaries, to wit, the President of the United States of America, by and with the advice and consent of the Senate of the said states, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said states, near the government of the French republic, and the first consul, in the name of the French people, the French citizen Barbe Marboas, minister of the public treasury, who, after having respectively exchanged their full powers, have agreed to the following articles :

Retrocession of Louisiana by Spain to France.

(44) ARTICLE 1. Whereas, by the article the third of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, an 9 (1st October, 1800) between the first consul of the French republic and his catholic majesty it was agreed as follows: "His catholic majesty promises and engages on his part, to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states." *And whereas*, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory. The first consul of the French republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French republic, forever and in full sovereignty the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic in virtue of the above mentioned treaty, concluded with his catholic majesty.

Cession from France to the United States.

Objects included in the cession.

(45) ARTICLE 2. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks and other edifices, which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana, and its dependencies, will be left in the possession of the commissioners of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

Inhabitants to be incorporated into the Union—upon what principles

(46). ARTICLE 3. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

Ceded territory, how received from Spain and transmitted to the United States

(47) ARTICLE 4. There shall be sent by the government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his catholic majesty the said country and its dependencies, in the name of the French republic, if it has not been already done, as to transmit it in the name of the French republic to the commissary or agent of the United States.

Military posts, when surrendered

(48) ARTICLE 5. Immediately after the ratification of the present treaty by the President of United States, and in case that of the first consul shall have been previously obtained, the commissary of the French republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the President to take possession; the troops of France or Spain, who may be there, shall cease to

occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this treaty.

Indian treaties to be executed by the United States.

(49) ARTICLE 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

Vessels of France and Spain admitted into the ports of the ceded territory for twelve years, on what terms.

(50) ARTICLE 7. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on; it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the ports of New Orleans, and all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States, coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than those paid by the citizens of the United States.

No other nation entitled to the same privileges for twelve years

Objects of indulgence to French and Spanish vessels

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory: the twelve years shall commence three months after the exchange or ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is, however, well understood, that the object of the above article is to favor the manufactures, commerce, freight and navigation of France and Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

After twelve years, ships of France, how treated.

(51) ARTICLE 8. In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

A convention for payment of debts to citizens of the United States to be ratified herewith.

(52) ARTICLE 9. The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French republic, prior to the 30th of September, 1800 (8th Vendemiaire, 9), is approved, and to have its execution in the same manner as if it had been inserted in the present treaty, and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

Another particular convention, signed at the same date as the

Another convention relative to a definitive rule between the parties to be ratified at the same time.

present treaty, relative to a definite rule between the contracting parties, is in the like manner approved, and will be ratified in the same form, and in the same time, and jointly.

Ratifications to be exchanged in six months

(53) ARTICLE 10. The present treaty shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months after the date of the signature by the ministers plenipotentiary, or sooner if possible.

In faith whereof, the respective plenipotentaries have signed these articles in the French and English languages, declaring, nevertheless, that the present treaty was originally agreed to in the French language; and have thereunto put their seals.

Done at Paris, the tenth day of Floreal, in the eleventh year of the French republic, and the 30th April, 1803.

ROBERT R. LIVINGSTON, [L. S.]
JAMES MONROE, [L. S.]
BARBE MARBOIS. [L. S.]

TREATY

Concluded at Aranjuez, March 21st 1801, between France and Spain for the accession to the throne of Tuscany of the Duke of Parma, and for the cession of Louisiana to France.

(53*a*) ARTICLE 6. This treaty having its origin in that which was concluded between the First Consul and his Catholic Majesty, whereby the King cedes to France the possession of Louisiana, the contracting parties mutually agree to execute the articles of the said treaty, and that, until an agreement shall have been reached concerning the differences found therein, the said treaty shall not annul their respective rights.

[The foregoing is the only article in the above treaty that has reference to Louisiana.

HENRY L. THOMAS,
Translator to Dep't of State.]

CESSION OF OKLAHOMA LANDS, BY THE CREEK NATION.

ART. 1.—Granting title to lands. To take effect therein.
SEC. 2.—Agreement ratified. How only settlers may acquire title—limited to 160 acres. Section 2301, U. S. R. S. do not apply. Sooners not permitted to enter.
2301 *can* prove up any time before five years.

(54) ARTICLE 1. That the Muscogee (or Creek) Nation, in consideration of the sum of money hereinafter mentioned, hereby absolutely cedes and grants to the United States, without reservation or condition, full and complete title to the entire western half of the domain of the said Muscogee (or Creek) Nation lying west of the division line surveyed and established under the treaty of eighteen hundred and sixty-six, and also grants and releases to the United States all and every claim, estate, right, or interest of any and every description in or to any and all land and territory whatever, except so much of the said former domain of the said Muscogee (or Creek) Nation as lies east of said line of division, surveyed and established as aforesaid, and is now held and occupied as the home of said nation.

Granting title to land.

To take effect when.

* * * * * * *

WHEREAS, The Muscogee (or Creek) Nation of Indians has accepted, ratified and confirmed articles of cession and agreement by act of its national council, approved by the principal chief of said nation on the thirty-first day of January, eighteen hundred and eighty-nine, wherein it is provided that the grant and cession of land and territory therein made shall take effect when the same shall be ratified and confirmed by the Congress of the United States of America, Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said articles of cession and agreement are hereby accepted, ratified and confirmed.

(55) SEC. 2. That the lands acquired by the United States under said agreement shall be a part of the public domain, but they shall only be disposed of in accordance with the laws regulating homestead entries, and to the persons qualified to make such homestead entries, not exceeding one hundred and sixty acres to one qualified claimant. And the provisions of section twenty-three hundred and one of the Revised Statutes of the United States shall not apply to any lands acquired under said agreement. Any person who may enter upon any part of said lands in said agreement mentioned, prior to the time that the same are opened to settlement by act of Congress shall not be permitted to occupy or to make entry of such lands or lay any claims thereto.

Agreement ratified.

How only settlers may acquire title, limited to 160 acres Section 2301 U. S. R. S. do not apply, sooners not permitted to enter

Approved March 1, 1889.

[The section 2301 of the Revised Statutes, referred to in the foregoing section, reads as follows, to wit:

Can prove up any time before five years.

(56) SECTION 2301. Nothing in this chapter shall be so construed as to prevent any person who has availed himself of the benefits of section 2289 from paying the minimum price for the quantity of land so entered at any time before the expiration of five years, and obtaining a patent therefor from the government, as in other cases directed by law, on making proof of settlement and cultivation as provided by law granting pre-emption rights.]

OKLAHOMA LAND TITLES—HOW ACQUIRED.

SEC. 12.—Appropriation to purchase titles —disposal of fund—Conveyance not to inure to benefit of railroads—forfeiture.
13.—Reserving certain sections for school purposes. Who may acquire title and in what manner
SEC. 13—Soldiers rights not abridged. —Lands reserved for townsites.
14.—Commissioners to negotiate with Cherokee Indians—dutes of.
15.—Establishing land offices

AN ACT

Making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Appropriation to purchase title, disposal of fund.

(57) SECTION 12. That the sum of one million nine hundred and twelve thousand nine hundred and forty-two dollars and two cents be, and the same hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, to pay in full the Seminole Nation of Indians for all the right, title, interest, and claim which said nation of Indians may have in and to certain lands ceded by article three of the treaty between the United States and the said nation of Indians, which was concluded June fourteenth, eighteen hundred and sixty-six, and proclaimed August sixteenth, eighteen hundred and sixty-six, and which land was then estimated to contain two million one hundred and sixty-nine thousand and eighty acres, but which is now, after survey, ascertained to contain two millions thirty-seven thousand four hundred and fourteen and sixty-two hundredths acres, said sum of money to be paid as follows: One million five hundred thousand dollars to remain in the Treasury of the United States to the credit of said nation of Indians and to bear interest at the rate of five per centum per annum from July first, eighteen hundred and eighty-nine, said interest to be paid semi-annually to the treasurer of said nation, and the sum of four hundred and twelve thousand nine hundred and forty-two dollars and twenty cents, to be paid to such person or persons as shall be duly authorized by the laws of said nation to receive the same, at such times and in such sums as shall be directed and required by the legislative authority of said nation, to be immediately available; this appropriation to become operative upon the execution by the duly appointed delegates of said nation, specially empowered to do so, of a release and conveyance

to the United States of all the right, title, interest, and claim of said nation of Indians in and to said lands, in manner and form satisfactory to the President of the United States, and said release and conveyance when fully executed and delivered, shall operate to extinguish all claims of every kind and character of said Seminole Nation of Indians in and to the tract of country to which said release and conveyance shall apply, but such release and conveyance, and extinguishment shall not inure to the benefit of or cause to vest in any railroad company any right, title, or interest whatever in or to any of said lands, and all laws and parts of laws so far as they conflict with the foregoing, are hereby repealed, and all grants or pretended grants of said lands and interest or right therein now existing in or on behalf of any railroad company, except rights of way and depot grounds, are hereby declared to be forever forfeited for breach of condition.

Conveyance not to inure to benefit of railroads, forfeiture.

(58) SECTION 13. That the land acquired by the United States under said agreement shall be a part of the public domain, to be disposed of only as herein provided, and sections sixteen and thirty-six of each township, whether surveyed or unsurveyed, are hereby reserved for the use and benefit of the public schools, to be established within the limits of said lands under such conditions and regulations as may hereafter be enacted by Congress.

Reserving certain sections for school purposes

That the lands acquired by conveyance from the Seminole Indians hereunder, except the sixteenth and thirty-sixth sections shall be disposed of to actual settlers under the homestead laws only, except as herein otherwise provided (except that section two thousand three hundred and one of the Revised Statutes shall not apply): *And provided further*, That any person who having attempted to, but for any cause, failed to secure a title in fee to a homestead under existing law, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands: *And provided further*, That the rights of honorably discharged Union soldiers and sailors in the late civil war as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged: *And provided further*, That each entry shall be in a square form as nearly as practicable and no person be permitted to enter more than one-quarter section thereof, but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall ever be permitted to enter any of said lands or acquire any right thereto.

Who may acquire title and in what manner

Soldiers' rights not abridged

That all the foregoing provisions with reference to lands to be acquired from the Seminole Indians including the provisions pertaining to forfeiture shall apply to and regulate the disposal of the lands acquired from the Muscogee and Creek Indians by articles of cession and agreement made and concluded at the city of Washington on the nineteenth day of January in the year of our Lord eighteen hundred and eighty-nine.

The Secretary of the Interior may, after said proclamation and not before, permit entry of said lands for town-sites, under sec-

Lands reserved for townsites.

tions twenty-three hundred and eighty seven and twenty-three hundred and eighty-eight of the Revised Statutes, but no such entry shall embrace more than one-half section of land.

Commissioners to negotiate with Cherokee Indians, duties of.

(59) SECTION 14. The President is hereby authorized to appoint three commissioners, not more than two of whom shall be members of the same political party, to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands, and any and all agreements resulting from such negotiation shall be reported to the President and by him to Congress at its next session and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same for ratification, and for this purpose the sum of twenty-five thousand dollars, or as much thereof as may be necessary, is hereby appropriated, to be immediately available: *Provided*, That said Commission is further authorized to submit to the Cherokee Nation the proposition that said nation shall cede to the United States in the manner and with the effect aforesaid, all the rights of said nation in said lands upon the same terms as to payment as is provided in the agreement made with the Creek Indians of date January nineteenth, eighteen hundred and eighty-nine and ratified by the present Congress; and if said Cherokee Nation shall accept, and by act of its legislative authority duly passed, ratify the same, the said lands shall thereupon become a part of the public domain for the purpose of such disposition as is herein provided, and the President is authorized as soon thereafter as he may deem advisable, by proclamation to open said lands to settlement in the same manner and to the same effect, as in this act provided concerning the lands acquired from said Creek Indians, but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto.

Establishing land offices.

(60) SECTION 15. That the President may whenever he deems it necessary create not to exceed two land districts embracing the lands which he may open to settlement by proclamation as hereinbefore provided, and he is empowered to locate land offices for the same appointing thereto in conformity to existing law registers and receivers and for the purpose of carrying out this provision, five thousand dollars or so much thereof as may be necessary is hereby appropriated.

Approved, March 2, 1889.

OPENING OF OKLAHOMA TO SETTLEMENT.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLALATION.

WHEREAS, Pursuant to section eight, of the Act of Congress approved March 3d, 1885, entitled "An Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30th, 1886, and for other purposes," certain articles of cession and agreement were made and concluded at the city of Washington on the 19th day of January, in the year of our Lord, 1889, by and between the United States of America and the Muscogee (or Creek) Nation of Indians, whereby the said Muscogee (or Creek) Nation of Indians, for the consideration therein mentioned, ceded and granted to the United States without reservation or condition, full and complete title to the entire western half of the domain of the said Muscogee (or Creek) Nation, in the Indian Territory, lying west of the division line surveyed and established under the treaty with said Nation, dated the 14th day of June, 1866, and also granted and released to the United States all and every claim, estate, right or interest of any and every description in and to any and all land and territory whatever, except so much of the former domain of said Muscogee (or Creek) Nation as lies east of said line of division surveyed and established as aforesaid and then used and occupied as the home of said Nation, and which articles of cession and agreement were duly accepted, ratified and confirmed by said Muscogee (or Creek) Nation of Indians by act of its council, approved on the 31st day of January, 1889, and by the United States by act of Congress approved March 1st, 1889, and

. WHEREAS, By section twelve of the Act, entitled "An Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30th, 1890, and for other purposes," approved March 2d, 1889, a sum of money was appropriated to pay in full the Seminole Nation of Indians for all the right, title, interest and claim which said Nation of Indians might have in and to certain lands ceded by article three of the treaty between the United States and said Nation of Indians concluded, June 14th, 1866, and proclaimed August 16th, 1866, said appropriation to become operative upon the execution by the duly appointed delegates of said Nation, specially empowered to do so, of a release and conveyance to the United States of all right, title, interest and claim of said Nation of Indians, in and to said land, in manner, and form, satisfactory to the President of the United States, and

WHEREAS, Said release and conveyance, bearing date the 16th day of March, 1889, has been duly and fully executed, approved and delivered; and

WHEREAS, Section thirteen of the Act last aforesaid, relating to said lands, provides as follows:

[See the section, under head "Creek Treaty."]

Description of lands opened to settlement.

NOW, THEREFORE I, Benjamin Harrison, President of the United States, by virtue of the power in me vested by said Act of Congress, approved March 2d, 1889, aforesaid, do hereby declare and make known, that so much of the lands, as aforesaid, acquired from or conveyed by the Muscogee (or Creek) Nation of Indians, and from or by the Seminole Nation of Indians, respectively, as is contained within the following described boundaries, viz: Beginning at a point where the degree of longitude ninety-eight west from Greenwich, as surveyed in the years 1858, and 1871, intersects the Canadian river; thence north along and with the said degree to a point where the same intersects the Cimarron river, thence up said river, along the right bank thereof, to a point where the same is intersected by the south line of what is known as the Cherokee lands lying west of the Arkansas river, or as the "Cherokee Outlet," said line being the north line of the lands ceded by the Muscogee (or Creek) Nation of Indians to the United States by the treaty of June 14th, 1869, thence east along said line to a point where the same intersects the west line of the lands set apart as a reservation for the Pawnee Indians, by Act of Congress approved April 10th, 1876, being the range line between ranges four and five east of the Indian Meridian, thence south on said line to a point where the same intersects the middle of the main channel of the Cimarron river, thence up said river, along the middle of the main channel thereof, to a point where the same intersects the range line between range one east and range one west (being the Indian Meridian) which line forms the western boundary of the reservation set apart respectively for the Iowa and Kickapoo Indians, by Executive orders dated respectively, August 15th, 1883, thence south along said range line or meridian to a point where the same intersects the right bank of the North Fork of the Canadian river; thence up said river, along the right bank thereof, to a point where the same is intetsected by the west line of the reservation occupied by the Citizen Band of Pottowatomies, and the Absentee Shawnee Indians, set apart under the provisions of the treaty of February 27th, 1867, between the United States and the Pottowatomie tribe of Indians and referred to in the Act of Congress approved May 23, 1872; thence south along the said west line of the aforesaid reservation to a point where the same intersects the middle of the main channel of the Canadian river, thence up the said river, along the middle of the main channel thereof, to a point opposite to the place of beginning, and thence north to the place of beginning (saving and excepting one acre of land in square form in the northwest corner of section nine, in township sixteen north, range two west of the Indian Meridian in Indian Territory; [subsequently changed by proclamation.], and also one acre of land in the southeast corner of the

northwest quarter of section fifteen, township sixteen north, range seven west, of the Indian Meridian in the Indian Territory; (which last described two acres are hereby reserved for government use and control,) will at and after the hour of twelve o'clock, noon, of the 22d day of April next, and not before, be open for settlement, under the terms of and subject to all the conditions, limitations, and restrictions contained in said Act of Congress, approved March 2d, 1889, and the laws of the United States applicable thereto.

And it is hereby expressly declared and made known that no other parts or portions of the lands embraced within the Indian Territory than those herein specifically described, and declared to be open to settlement at the time above named and fixed, are to be considered as open to settlement under this Proclamation or the act of March 2d, 1889, aforesaid; and

Warning to sooners.

Warning is hereby again expressly given that no person entering upon and occupying said lands before said hour of twelve o'clock, noon, of the 22d day of April, A. D. 1889, hereinbefore fixed, will ever be permitted to enter any of said lands or acquire any rights thereto, and that the officers of the United States will be required to strictly enforce the provisions of the Act of Congress to the above effect.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington, this 23d day of March, in the year of our Lord one thousand eight hundred and eighty-nine, and of the independence of the United States the one hundred and thirteenth.

[SEAL.] BENJAMIN HARRISON.

By the President,

JAMES G. BLAINE, *Secretary of State.*

ORGANIC ACT.

SEC. 1—Boundaries of Oklahoma Territory—Congress may change boundaries.
2—Executive power, in whom vested—Duties of Governor.
3—Duties of Secretary.
4—Legislative power,—Qualification of legislators, term of office, duration of session. Establishing Counties and County seats. Legislation may change same. Provisions for first election.
5—Qualification of electors at first election.
6—Limitations of legislative power. Property must be taxed without discrimination. Special licenses—Procedure in passing laws.
7—Township, district and county offices—how filled. Legislature cannot authorize issuance of scrip for construction of railroads.
8—Legislators cannot hold offices created by them.
9—Judicial powers—in whom vested. Jurisdiction of Supreme and District Courts Jurisdiction of Probate Court and Justices of the Peace. Supreme Court to define judicial districts. Unorganized territory. Appeals from District Court allowed when Appeals from Supreme Court allowed whom. Additional jurisdiction of District Courts. —Cherokee outlet —Supreme and District Courts may issue writs of mamdamus.
10—U. S. Marshals to make arrests. All offenses triable in County where commited.
11—Nebraska Laws temporarily in force in Oklahoma Territory—The Governor to establish voting precincts—Supreme and District Courts may enforce Nebraska laws applying by this act. Jurisdiction of County Courts and Justices.
12—Extending jurisdiction of district courts over Indians in Oklahoma.
13—Duties and qualifications of United States Attorney.
SEC. 14—Territorial officers—oath of office, etc.—salaries.
15—Temporary seat of government.
16—Delegate to congress—how and when elected.
17—National banks.
18—Lands in lieu of school land grants. Other land provisions.
19—Public land strip.
20—Procedure in securing lands.
21—May secure patent in twelve months.
22—Townsite may be secured—when and how.
23—Relating to public highways.
24—Fraudulent settlement of public lands—how punished.
25—This act does not apply to Greer county only on certain conditions.
26—Appropriations.
27—Legal rights acquired not invalidated.
28—Laws applicable—repealing provisions.
29—Boundaries of Indian Territory. Establishing a court.
30—Organization of courts—how, when and where.
31—Extending certain general laws of Arkansas over Indian Territory. No attachments to issue against improvements on Indian lands—except when. Executions valid when. Court may order improvements sold when. Receiver can be appointed under certain conditions. This act not to deprive civilized tribes of certain jurisdictions.
32—Defining the application of certain words.
33, 34, 35 & 36—*Defining jurisdiction* of certain courts of Indian Territory, Texas and Arkansas.
37—Prohibiting lotteries and games of chance.
38—Relating to marriages.
39—United States Commissioners, by whom appointed—appeals.
40—Providing for arrests for crime.
41—Extradition authority, in whom vested.
42—Appeals to United States Supreme court.
43—Indians may become citizens.
44—Appropriations.

AN ACT

To organize the Territory of Oklahoma—to establish courts in the Indian Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Boundaries of Oklahoma territory

(61) SECTION 1. That all that portion of the United States now

known as the Indian Territory (except so much of the same as is actually occupied by the five civilized tribes, and the Indian tribes within the Quapaw Indian Agency, and except the unoccupied part of the Cherokee outlet,) together with that portion of the United States known as the Public Land Strip, is hereby erected into a temporary government by the name of the Territory of Oklahoma. The portion of the Indian Territory included in said Territory of Oklahoma is bounded by a line drawn as follows: Commencing at a point where the ninety-eighth meridian crosses the Red river, thence by said meridian to the point where it crosses the Canadian river, thence along said river to the west line of the Seminole country, thence along said line to the north fork of the Canadian river, thence down said river to the west line of the Creek country, thence along said line to the northwest corner of the Creek country, thence along the north line of the Creek country to the ninety-sixth meridian, thence northward by said meridian to the southern boundary line of Kansas, thence west along said line to the Arkansas river, thence down said river to the north line of the land occupied by the Ponca tribe of Indians, from which point the line runs so as to include all the lands occupied by the Ponca, Tonkawa, Otoe and Missouria, and Pawnee tribes of Indians until it strikes the south line of the Cherokee outlet which it follows westward to the (east) line of the State of Texas, thence by the boundary line of the State of Texas to the point of beginning; the Public Land Strip which is included in said Territory of Oklahoma is bounded east by the one-hundredth meridian, south by Texas, west by New Mexico, north by Colorado and Kansas. Whenever the interest of the Cherokee Indians in the land known as the Cherokee outlet shall have been extinguished and the President shall make proclamation thereof, said outlet shall thereupon and without further legislation become a part of the Territory of Oklahoma. Any other lands within the Indian Territory not embraced within these boundaries shall hereafter become a part of the Territory of Oklahoma whenever the Indian Nation or tribe owning such lands shall signify to the President of the United States in legal manner its assent that such lands shall so become a part of said Territory of Oklahoma, and the President shall thereupon make proclamation to that effect.

Congress may change boundaries

Congress may at any time hereafter change the boundaries of said Territory, or attach any portion of the same to any other State or Territory of the United States, without the consent of the inhabitants of the Territory hereby created: *Provided*, That nothing in this act shall be construed to impair any right now pertaining to any Indians or Indian tribe in said Territory under the laws, agreements, and treaties of the United States, or to impair the rights of person or property pertaining to said Indians, or to affect the authority of the government of the United States to make any regulation or to make any law respecting said Indians, their lands, property or other rights which it would have been competent to make or enact if this act had not been passed.

(62) SECTION 2. That the executive power of the Territory of

Executive power, in whom vested. Duties of governor.

Oklahoma shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory; shall be Commander-in-Chief of the militia thereof; he may grant pardons for offenses against the laws of said Territory, and reprieves for offenses against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said Territory, and shall take care that the laws be faithfully executed.

Duties of secretary

(63) SECTION 3. That there shall be a Secretary of said Territory, who shall reside therein and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and the proceedings of the legislative assembly hereinafter constituted, and all acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the President of the United States and to the Secretary of the Interior, and, at the same time, two copies of the laws and journals of the legislative assembly to the Speaker of the House of Representatives and the President of the Senate for the use of Congress; and in case of the death, removal, resignation, or other necessary absence of the Governor from the Territory, the Secretary shall execute all the powers and perform all the duties of the Governor during such vacancy or absence, or until the Governor is appointed and qualified.

Legislative power, qualification of legislators, term of office, duration of session.

(64) SECTION 4. That the legislative power and authority of said Territory shall be vested in the Governor and legislative assembly. The legislative assembly shall consist of a Council and a House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue two years; and the sessions of the legislative assembly shall be biennial and shall be limited to sixty days' duration: *Provided, however*, That the duration of the first session of said legislative assembly may continue one hundred and twenty days.

Establishing counties and county seats. Legislature may change same

That for the purpose of facilitating the organization of a temporary government in the Territory of Oklahoma, six counties are hereby established therein, to be known, until after the first election in the Territory, as the First County, the Second County, the Third County, the Fourth County, the Fifth County, and the Sixth County, the boundaries of which shall be fixed by the Governor of the Territory until otherwise provided by the legislative assembly thereof. The county seat of the First County shall be at Guthrie. The county seat of the Second County shall be at Oklahoma City. The county seat of the Third County shall be at Norman. The county seat of the Fourth County shall be at El Reno. The county seat of the Fifth County shall be at Kingfisher City. The Sixth County shall embrace all that portion of the Territory lying

west of the one hundredth meridian, known as the Public Land Strip, the county seat of which shall be at Beaver: *Provided*, That the county seats located by this act may be changed in such manner as the Territorial legislature may provide.

Provisions for first election.

At the first election for members of the legislative assembly the people of each county may vote for a name for such county, and the name which receives the greatest number of votes shall be the name of such county. If two or more counties should select the same name, the county which casts the greatest number of votes for such name shall be entitled to the same, and the names receiving the next highest number of votes in the other counties shall be the names of such counties. An apportionment shall be made by the Governor, as nearly equal as practicable, among the several counties or districts for the election of the Council and House of Representatives, giving to each section of the Territory, representation in the ratio of its population (excepting Indians not taxed) as nearly as may be; and the members of the Council and House of Representatives shall reside in and be inhabitants of the districts for which they may be elected, respectively. Previous to the first election the Governor shall cause a census or enumeration of the inhabitants of the several counties or districts of the Territory to be taken, unless the same shall have been taken and published by the United States, in which case such census and enumeration shall be adopted, and the first election shall be held at such times and places, and be conducted in such manner, both as to the persons who superintend such election and the returns thereof, as the Governor shall appoint and direct, and he shall at the same time declare the number of the members of the Council and the House of Representatives to which each of the counties or districts shall be entitled, as shown by the census herein provided for. The number of persons authorized to be elected, having the greatest number of votes for the House of Representatives, equal to the number to which each county or district shall be entitled, shall be declared by the Governor to be elected members of the House of Representatives; *Provided*, That in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the legislative assembly, the Governor shall order a new election; and the persons thus elected to the legislative assembly shall meet, at such place and on such day as the Governor shall appoint, but after such first election, however, the time, place and manner of holding elections by the people, and the appointment of representation, and the day of the commencement of the regular sessions of the legislative assembly, shall be prescribed by law; *Provided, however*, That the Governor shall have power to call the legislative assembly together by proclamation, on an extraordinary occasion, at any time.

Qualifications of electors at first election.

(65) SECTION 5. That all male citizens of the United States above the age of twenty-one years, and all male persons of foreign birth over said age, who shall have, twelve months prior thereto, declared their intention to become citizens of the United States, as now required by law, who are actual residents at the time of the passage of this act of that portion of said Territory which was

declared by the proclamation of the President to be open for settlement on the twenty-second day of April, eighteen hundred and eighty-nine, and of that portion of said Territory heretofore known as the Public Land Strip, shall be entitled to vote at the first election in the Territory. At every subsequent election the qualifications of voters, and of holding office, shall be such as may be prescribed by the legislative assembly, subject, however, to the following restrictions on the power of the legislative assembly, namely: *First.* The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years and by persons of foreign birth above that age who have declared, on oath, before a competent court of record, as required by the naturalization laws of the United States, their intention to become citizens, and have taken an oath to support the Constitution of the United States, and who shall have been residents of the United States for the term of twelve months before the election at which they offer to vote. *Second.* There shall be no denial of the elective franchise or of holding office, to a citizen, on account of race, color, or previous condition of servitude. *Third.* No officer, soldier, seaman, marine, or othe person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in said Territory by reason of being on service therein. *Fourth.* No person belonging to the army or navy shall be elected to, or hold, any civil office or appointment in said Territory.

Limitation of legislative power.

(66) SECTION 6. That the legislative power of the Territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and Laws of the United States, but no law shall be passed interfering with the primary disposal of soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right to private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to ~~the~~ taxation shall be taxed in proportion to its value: *Provided*, That nothing herein shall be held to prohibit the levying and collecting license or special taxes in the Territory, from persons engaged in any business therein, if the legislative power shall consider such taxes necessary. Every bill which shall have passed the Council and the House of Representatives of said Territory shall, before it becomes a law, be presented to the Governor of the Territory. If he approves he shall sign it, but if not, he shall return it with his objections to the House in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a law. But in all such cases the vote of both Houses shall be determined by yeas and nays, to be entered on the journal of each House respectively. If any bill shall not be returned by the Governor within five days (Sunday excepted) after it shall

Property must be taxed without discrimination.

Special licenses.

Procedure in passing laws.

have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.

(67) SECTION 7. That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and legislative assembly of the Territory. The Governor shall nominate and, by and with the advice and consent of the Council, appoint all officers not herein otherwise provided for, and in the first instance the Governor alone may appoint all such officers, who shall hold their offices until the end of the first session of the legislative assembly; and he shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers; and whenever a vacancy happens from resignation or death, during the recess of the legislative Council, in any office which is filled by appointment of the Governor, by and with the advice and consent of the Council, the Governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative Council. It is further provided that the legislative assembly shall not authorize the issuing of any bond, scrip, or evidence of debt by the Territory, or any county, city, town, or township therein, for the construction of any railroad.

Townahip, district and county officers, how filled

Legislature cannot authorize issuance of scrip for construction of railroads.

(68) SECTION 8. That no member of the legislative assembly shall hold or be appointed to any office, which has been created or the salary or emoluments of which have been increased while he was a member, during the term for which he was elected and for one year after the expiration of such term, but this restriction shall not be applicable to members of the first legislative assembly provided for by this act; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said Territory.

Legislators cannot hold offices created by them

(69) SECTION 9. That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and Justices of the Peace. The Supreme Court shall consist of a chief-justice and two associate justices, any two of whom shall constitute a quorum. They shall hold their offices for four years, and until their successors are appointed and qualified, and they shall hold a term annually at the seat of government of said Territory. The jurisdiction of the several courts herein provided for, both appellate and original, and that the Probate Courts and of the Justices of the Peace, shall be as limited by law: *Provided*, That Justices of the Peace, who shall be elected in such manner as the legislative assembly may provide by law, shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars, and said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction, and authority for redress of all wrongs committed against the constitution or laws of the United States or of the Territory affecting persons or property. Said Territory shall be divided into three

Judicial power, in whom vested.

Jurisdiction of Supreme and District Courts

Jurisdiction of Probate Court and Justices of the Peace,

judicial districts, and a District Court shall be held in each county in said district thereof by one of the Justices of the Supreme Court, at such time and place as may be prescribed by law, and each judge after assignment shall reside in the district to which he is assigned. The Supreme Court shall define said judicial districts, and shall fix the times and places at each county seat in each district, where the Distrct Court shall be held and designate the judge who shall preside therein. And the territory not embraced in organized counties shall be attached for judicial purposes to such organized county or counties as the Supreme Court may determine. The Supreme Court of said Territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed. Each District Court shall appoint its clerk, who shall also be the register in chancery, and shall keep his office where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from final decisions of said District Courts, to the Supreme Court under such regulations as may be prescribed by law, but in no case removed to the Supreme Court shall trial by jury be allowed in said court. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property or the amount in controversy to be ascertained by oath or affirmation of either party or other competent witnesses, shall exceed five thousand dollars; and each of said

Supreme Court to define judicial districts

Unorganized territory.

Appeals from District Court allowed when

District Courts shall have and exercise, exclusive of any court heretofore established, the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the Circuit and District Courts of the United States. In addition to the jurisdiction otherwise conferred by this act, said District Courts shall have and exercise exclusive original jurisdiction over all offenses against the law of the United States committed within that portion of the Cserokee Outlet not embraced within the boundaries of said Territohy of Oklahoma as herein defined, and in all civil cases between ritizens of the United States residing in such portion of the Cherockee Outlet, or between citizens of the United States, or of any State or Territory, and any citizen of or person or persons residing or found therein, when the value of the thing in controversy or damages or money claimed shall exceed one hundred dollars; writs of error, bills of exceptions, and appeals shall in all such cases, civil and criminal, be allowed from the District Courts to the Supreme Court in like manner, and be proceeded with in like manner as in cases arising within the limits of said Territory. For all judicial purposes as herein defined such portion of the Cherokee Outlet not embraced within the boundaries of the Territory of Oklahoma shall be attached to, and be a part of, one of the judicial districts of said Territory, as may be designated by the Supreme Court. All acts and parts of acts heretofore enacted, conferring jurisdiction upon United States courts held beyond and outside the limits of the Territory of Oklahoma as herein defined, as to all causes of action or offenses

Appeals from Supreme Court allowed when

Additional jurisdiction of District Courts

in said Territory, and in that portion of the Cherokee Outlet hereinbefore referred to, are hereby repealed, and such jurisdiction is hereby given to the Supreme and District Courts in said Territory and in the Cherokee Outlet, prior to the passage of this act, shall be tried and prosecuted, and proceeded with until finally disposed of, in the courts now having jurisdiction thereof, as if this act had not been passed. The said Supreme and District Courts of said Territory, and the respective judges thereof, shall and may grant writs of mandamus and habeas corpus in all cases authorized by law; and the first six days of every term of faid courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under said constitution and laws; and writs of error and appeals in all such cases shall be made to the Supreme Court of said Territory, as in other cases.

Cherokee outlet

Snpreme and District Court may issue writs of mandamus

(70) SECTION 10. Persons charged with any offense or crime in the Territory of Oklahoma, and for whose arrest a warrant has been issued, may be arrested by the United States Marshal or any of his deputies, wherever found in said Territory, but in all cases the accused shall be taken, for preliminary examination, before a United States Commissioner, or a Justice of the Peace of the county, whose office is the nearest to the place where the offense or crime was committed.

U. S. Marshals to make arrests.

All offenses committed in said Territory, if committed within any organized county, shall be prosecuted and tried within said county, and if committed within territory not embraced in any organized county, shall be prosecuted and tried in the county to which such territory shall be attached for judicial purposes. And all civil actions shall be instituted in the county in which the defendant, or either of them, resides or may be found; and when such actions arise within any portion of said Territory, not organized as a county, such actions shall be instituted in the county to which such Territory is attached for judicial purposes, but any case, civil or criminal, may be removed, by change of venue, to another county.

All offenses triable in county where committed.

(71) SECTION 11. That the following chapters and provisions of the compiled laws of the State of Nebraska, in force November first, eighteen hundred and eighty-nine, in so far as they are locally applicable, and not in conflict with the laws of the United States or with this act, are hereby extended to and put into force in the Territory of Oklahoma, until after the adjournment of the first session of the legislative assembly of said Territory, namely: the provisions of articles two, three, and four, of chapter two, entitled "Agriculture;" of chapter four, entitled "Animals;" of chapter six, entitled "Assignments;" of chapter seven, entitled "Attorneys;" of chapter ten, entitled "Bonds and oaths—official;" of chapter twelve, entitled "Chattle mortgages;" of chapter fourteen, entitled "Cities of the second class and villages;" of chapter fifteen, entitled "Common law;" of chapter sixteen, entitled "Corporations;" of chapter eighteen, entitled "Counties and county officers;" of sections fifteen and sixteen of article six of the constitution of said State, and of chapter twenty of said laws, entitled "Courts—probate;" of chapter twenty-three, entitled "Decedents;" of chapter

Sections of Nebraska laws temporarily in force in Oklahoma Territory

twenty-four, entitled "Deputies;" of chapter twenty-five, entitled "Divorce and alimony;" of chapter twenty-six, entitled "Elections;" of chapter twenty-eight, entitled "Fees;" of chapter thirty-two, entitled "Frauds;" of chapter thirty-four, entitled "Guardians and wards;" of chapter thirty-six, entitled "Homesteads;" of chapter forty-one, entitled "Instruments negotiable;" of chapter forty-four, entitled "Interest;" of chapter forty-six, entitled "Jails;" of chapter fifty, entitled "Liquors:" but no licenses shall be issued under this chapter; of chapter fifty-two, entitled "Marriage;" of chapter fifty-three, entitled "Married women;" of chapter fifty-four, entitled "Mechanics' and laborers' liens;" of chapter sixty-one, entitled "Oath and affirmations," of chapter sixty-three, entitled "Occupying claimants;" of article one of chapter seventy-two, entitled "Rail Roads;" of chapter seventy-three, entitled "Real estate;" and the provisions of part two of said laws, entitled "Code of civil procedure," and of part three thereof, entitled "Criminal code."

The Governor to establish voting precincts

The governor of said Territory is authorized to divide each county into election precincts and into such political sub-divisions other than school districts as may be required by the laws of the State of Nebraska; and is hereby authorized to appoint all officers of such counties and sub-divisions thereof as he shall deem necessary, and all election officers until their election or appointment shall be provided for by the legislative assembly, but not more than two of the judges or inspectors of election in any election precinct shall be members of the same political party, and the candidates of each political party who may be voted for at such election may designate one person who shall be present at the counting and canvassing of the votes cast in each precinct.

Supreme and District Courts may enforce Nebraska laws applying by this Act Jurisdiction of County Courts and Justices.

The Supreme and District Courts of said Territory shall have the same power to enforce the laws of the State of Nebraska hereby extended to and put in force in said Territory as courts of like jurisdiction have in said State, but county courts and Justices of the Peace shall have and exercise the jurisdiction which is authorized by said laws of Nebraska: *Provided*, That the jurisdiction of Justices of the Peace in said Territory shall not exceed the sum of one hundred dollars, and County Courts shall have jurisdiction in all cases where the sum or matter in demand exceeds the sum of one hundred dollars.

Extending jurisdiction of District Courts over Indians in Oklahoma

(72) SECTION 12 That jurisdiction is hereby conferred upon the district courts of the Territory of Oklahoma over all controversies arising between members or citizens of other tribes or nations in the Territory of Oklahoma, and any citizen or member of one tribe or nation who may commit any offense or crime in said Territory against the person or property of a citizen or member of another tribe or nation shall be subject to the same punishment in the Territory of Oklahoma as he would be if both parties were citizens of the United States; and any person residing in the Territory of Oklahoma, in whom there is Indian blood, shall have the right to invoke the aid of courts therein for the protection of his person or property, as though he were a citizen of the United States: *Provided*, That nothing in this act contained shall be

construed as to give jurisdiction to the courts established in said Territory in controversies arising between Indians of the same tribe, while sustaining their tribal relation.

Duties and qualifications of United States attorney.

(73) Section 13. That there shall be appointed for said Territory a person learned in the law, who shall act as attorney for the United States, and shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the President Said attorney shall receive a salary at the rate of two hundred and fifty dollars annually. There shall be appointed a Marshal for said Territory, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President, and who shall execute all process issueing from the said courts when exercising their jurisdiction as Circuit and District Courts of the United States, he shall have and preform the duties and be subject to the same regulations and penalties imposed by law on the Marshal of the United States, and be entitled to a salary at the rate of two hundred dollars a year. There shall be allowed to the Attorney, Marshal, Clerks of the Supreme and District Courts the same fees as are prescribed for similar services by such persons in chapter sixteen, title Judiciary, of the Revised Statutes of the United States.

Territorial officers, oath of office etc.

(74) Section 14 That the Governor, Secretary, Chief Justice, and Associate Justces, Attorney, and Marshal shall be nominated and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath of affirmation before the District Judge, or some Justice of Peace, or other officer in the limits of said Territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the Uuited States, to support the Constitution of the United States and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the Secretary, among the executive proceedings, and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same, to the Secretary, to be recorded by him as aforesaid, and afterwards the like oath or affirmation shall be taken, certified and recorded in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand six hundred dollars as Governor; the Chief Justice and Associate Justices shall receive an annual salary of three thousand dollars, and the Secretary shall receive an annual salary of one thousand eight hundred dollars. The said salaries shall be payable quarter-yearly at the Treasury of the United States. The members of the legislative assembly shall be entitled to receive four dollars each per

Salaries

day during their attendance at the sessions, and four dollars for each and every twenty miles traveled in going to and returning from said sessions, estimating the distance by the nearest traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the Governor to defray the contingent expenses of the Territory. There shall also be appropriated annually a sufficient sum, to be expended by the Secretary, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the legislative assembly, of the courts, the printing of the laws, and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

Temporary seat of government.

(75) SECTION 15. That the legislative assembly of the Territory of Oklahoma shall hold its first session at Guthrie, in said Territory, at such time as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Governor and legislative assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by the said Governor and legislative assembly.

Delgate to Congress, how and when elected.

(76) SECTION 16. That a delegate to the House of Representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States in the said House of Representatives. The first election shall be held at such time and place, and be conducted in such manner as the Governor shall appoint and direct, after at least sixty days' notice, to be given by proclamation, and at all subsequent elections the time, place, and manner of holding elections, shall be prescribed by law. The person having the greatest number of votes of the qualified electors, as hereinbefore provided, shall be declared by the Governor elected, and a certificate thereof shall be accordingly given.

National Banks.

(77) SECTION 17. That the provisions of title sixty-two of the Revised Statutes of the United States relating to national banks, and all amendments thereto, shall have the same force and effect in the territory of Oklahoma as elsewhere in the United States: *Provided*, That persons otherwise qualified to act as directors shall not be required to have resided in said Territory for more than three months immediately preceding their election as such.

Lands in lieu of school land grants. Other land provisons

(78) SECTION 18. That sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same. In all cases where sections sixteen and thirty-six, or either of them, are occupied by actual settlers prior to survey thereof the County Commissioners of the counties in which such sections are so occu-

pied are authorized to locate other lands, to an equal amount, in sections or fractional sections, as the case may be, within their respective counties, in lieu of the sections so occupied.

All the lands embraced in that portion of the Territory of Oklahoma heretofore known as the Public Land Strip, shall be open to settlement under the provisions of the homestead laws of the United States, except section twenty-three hundred and one of the Revised Statutes, which shall not apply; but all actual and bona fide settlers upon and occupants of the lands in said Public Land Strip at the time of the passage of this act, shall be entitled to have preference to and hold the lands upon which they have settled under the homestead laws of the United States, by virtue of their settlement and occupancy of said lands, and they shall be credited with the time they have actually occupied their homesteads, respectively, not exceeding two years, on the time required under said laws, to perfect title as homestead settlers.

The lands within said Territory of Oklahoma, acquired by cession of the Muscogee (or Creek) Nation of Indians, confirmed by Act of Congress approved March first, eighteen hundred and eighty-nine, and also the lands acquired in pursuance of an agreement with the Seminole Nation of Indians by re-lease and conveyance, dated March sixteenth, eighteen hundred and eighty-nine, which may hereafter be opened to settlement, shall be disposed of under the provisions of sections twelve, thirteen and fourteen of the "Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety, and for other purposes," approved March second, eighteen hundred and eighty-nine, and under section two of an "Act to ratify and confirm an agreement with the Muscogee (or Creek)Nation of Indians in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine: *Provided, however,* That each settler under and in accordance with the provisions of said acts shall, before receiving a patent for his homestead, pay to the United States for the land so taken by him, in addition to the fees provided by law, the sum of one dollar and twenty-five cents per acre.

Whenever any of the other lands within the Territory of Oklahoma, now occupied by any Indian tribe, shall by operation of law or proclamation of the President of the United States, be open to settlement, they shall be disposed of to actual settlers only, under the provisions of the homestead law, except section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply: *Provided, however,* That each settler, under and in accordance with the provisions of said homestead laws, shall before receiving a patent for his homestead pay to the United States for the land so taken by him, in addition to the fees provided by law, a sum per acre equal to the amount which has been or may be paid by the United States to obtain a relinquishment of the Indian title or interest therein, but in no case shall such payment be less than one dollar and twenty-five cents per acre The rights of honorably discharged soldiers and sailors in the late

civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged except as to such payment. All tracts of land in Oklahoma Territory which have been set apart for school purposes, to educational societies, or missionary boards at work among the Indians, shall not be opened up for settlement, but are hereby granted to the respective educational societies or missionary boards for whose use the same No part of the land embraced within the Territory hereby created shall inure to the use or benefit of any railroad corporation, except the rights of way and land for stations heretofore granted to certain railroad corporations Nor shall any provision of this act or any act of any officer of the United States, done or performed under the provisions of this act or otherwise, invest any corporation owning or operating any railroad in the Indian Territory, or Territory created by this act, with any land or right to any land in either of said Territories, and this act shall not apply to or effect any land which, upon any condition on becoming a part of the public domain, would inure to the benefit of, or become the property of, any railroad corporation

Public land strip.

(79) SECTION 19. That portion of the Territory of Oklahoma heretofore known as the Public Land Strip is hereby declared a public land district, and the President of the United States is hereby empowered to locate a land office in said district, at such place as he shall select, and to appoint in conformity with existing law a Register and Receiver of said land office. He may also, whenever he shall deem it necessary, establish another additional land district within said Territory, locate a land office therein, and in like manner appoint a Register and Receiver thereof. And the Commissioner of the general land office shall, when directed by the President, cause the lands within the Territory to be properly surveyed and subdivided where the same has not already been done.

Procedure in securing lands

(80) SECTION 20 That the procedure in applications, entries, contests, and adjudications in the Territory of Oklahoma shall be in form and manner prescribed under the homestead laws of the United States, and the general principles and provisions of the homestead laws, except as modified by the provisions of this act, and the acts of Congress approved March first and second, eighteen hundred and eighty-nine, heretofore mentioned, shall be applicable to all entries made in said Territory, but no patent shall be issued to any person who is not a citizen of the United States at the time of making final proof.

All persons who shall settle on land in said Territory, under the provisions of the homestead laws of the United States, and of this act, shall be required to select the same in square form as nearly as may be, and no person who shall at the time be seized in fee simple of a hundred and sixty acres of land in any State or Territory, shall hereafter be entitled to enter land in said Territory of Oklahoma. The provisions of sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of

the United States shall, except as far as modified by this act, apply to all homestead settlements in said Territory.

May secure patent in twelve months.

(81) SECTION 21. That any person, entitled by law to take a homestead in said Territory of Oklahoma, who has already located and filed upon, or shall hereafter locate and file upon, a homestead within the limits described in the President's proclamation of April first, [March 23] eighteen hundred and eighty-nine, and under and in pursuance of the laws applicable to the settlement of the lands for settlement by such proclamation, and who has complied with all the laws relating to such homestead settlement, may receive a patent therefor at the expiration of twelve months from date of locating upon said homestead, upon payment to the United States of one dollar and twenty-five cents per acre for land embraced in such homestead.

Townsites may be secured, when and how

(82) SECTION 22. That the provisions of title thirty-two, chapter eight, of the Revised Statutes of the United States, relating to "reservation and sale of town sites on the public lands," shall apply to the lands open, or to be opened to settlement in the Territory of Oklahoma, except those opened to settlement by the proclamation of the President on the 22nd day of April, [March 23] eighteen hundred and eighty-nine: *Provided*, That hereafter all surveys for town sites in said Territory shall contain reservations for parks (of substantially equal area, if more than one park), and for schools and other public purposes, embracing in the aggregate not less than ten nor more than twenty acres; and patents for such reservations, to be maintained for such purposes, shall be issued to the towns respectively when organized as municipalities: *Provided, further*, That in case any lands in said Territory of Oklahoma, which may be occupied and filed upon as a homestead, under the provisions of law applicable to said Territory, by a person who is entitled to perfect his title thereto under such laws, are required for town site purposes, it shall be lawful for such person to apply to the Secretary of the Interior to purchase the lands embraced in said homestead, or any part thereof, for town site purposes. He shall file with the application a plat of such proposed town site, and if such plat shall be approved by the Secretary of the Interior, he shall issue a patent to such person for land embraced in said town site, upon the payment of the sum of ten dollars per acre for all the lands embraced in such town site, except the lands to be donated and maintained for public purposes, as provided in this section. And the sums so received by the Secretary of the Interior shall be paid over to the proper authorities of the municipalities when organized, to be used by them for school purposes only.

Relating to public highways.

(83) SECTION 23. That there shall be reserved public highways four rods wide between each section of land in said territory, the section lines being the center of said highways; but no deduction shall be made, where cash payments are provided for, in the amount to be paid for each quarter section of land by reason of such reservation. But if the said highway shall be vacated by any competent authority, the title to the respective strips shall inure to the then owner of the tract of which it formed a part by the original survey.

Fraudulent settlement of public lands, how punished.

(84) SECTION 24. That it shall be unlawful for any person, for himself or any company, association, or corporation, to directly or indirectly procure any person to settle upon any lands open to settlement in the Territory of Oklahoma, with intent thereafter of acquiring title thereto; and any title thus acquired shall be void; and the parties to such fraudulent settlement shall severally be guilty of a misdemeanor, and shall be punished upon indictment, by imprisonment not exceeding twelve months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment, in the discretion of the court.

This Act does not apply to Greer county only on certain conditions.

(85) SECTION 25. That inasmuch as there is a controversy between the United States and the state of Texas, as to the ownership of what is known as Greer county, it is hereby expressly provided that this act shall not be construed to apply to said Greer county until the title to the same has been adjudicated and determined to be in the United States; and, in order to provide for a speedy and final judicial determination of the controversy aforesaid, the Attorney-General of the United States is hereby authorized and directed to commence in the name and on behalf of the United States, and prosecute to a final determination, a proper suit in equity in the Supreme Court of the United States against the State of Texas, setting forth the title and claim of the United States to the tract of land lying between the North and South Forks of the Red river where the Indian Territory and the State of Texas adjoin, east of the one hundredth degree of longitude, and claimed by the State of Texas as within its boundary and a part of its land, and designated on its map as Greer county, in order that the rightful title to said land may be finally determined , and the court on the trial of the case may, in its discretion, so far as the ends of justice will warrant, consider any evidence heretofore taken and received by the Joint Boundary Commission under the act of Congress approved January thirty-first, eighteen hundred and eighty-five; and said case shall be advanced on the docket of said court, and proceeded with to its conclusion as rapidly as the nature and circumstances of the case permit.

Appropriations.

(86) SECTION 26. That the following sums, or so much thereof as may be necessary, are hereby appropriated, out of any money in the treasury not otherwise appropriated, to be disbursed under the direction of the Secretary of the Interior, in the same manner that similar appropriations are disbursed in the other Territories of the United States, namely:

To pay the expenses of the first legislative assembly of said Territory, including the printing of the session laws thereof, the sum of forty thousand dollars.

To pay the salaries of the Governor, the judges of the Supreme Court, the secretary of the Territory, the marshal, the attorney, and other officers whose appointment is provided for in this act, for the remainder of the fiscal year ending June thirtieth, eighteen hundred and ninety, the sum of twenty thousand dollars.

To pay for the rent of buildings for the legislative and executive offices, and for the Supreme and District Courts; to provide jails, and support prisoners; to pay mileage and per diem of jurors and

witnesses; to provide books, records, and stationery for executive and judicial offices for the remainder of the fiscal year ending June thirtieth, eighteen hundred and ninety, the sum of fifteen thousand dollars.

To enable the Governor to take a census of the inhabitants of said Territory, as required by law, the sum of five thousand dollars.

To be expended by the Governor in temporary support and aid of common school education in said Territory, as soon as a system of public schools shall have been established by the legislative assembly, the sum of fifty thousand dollars.

Legal rights acquired not invalidated.

(87) SECTION 27. That the provisions of this act shall not be so construed as to invalidate or impair any legal claims or rights of persons occupying any portion of said Territory, under the laws of the United States, but such claims shall be adjudicated by the Land Department, or the courts, in accordance with their respective jurisdictions.

Laws applicable, repealing provisions.

(88) SECTION 28. That the constitution and all the laws of the United States not locally inapplicable shall, except so far as modified by this act, have the same force and effect as elsewhere within the United States; and all acts and parts of acts in conflict with the provisions of this act are as to their effect in said Territory of Oklahoma hereby repealed: *Provided*, That section eighteen hundred and fifty of the Revised Statutes of the United States shall not apply to the Territory of Oklahoma.

Boundaries of Indian Territory proper Establishing a Court.

(89) SECTION 29. That all that part of the United States which is bounded on the north by the State of Kansas, on the east by the State of Arkansas and Missouri, on the south by the State of Texas, and on the west and north by the Territory of Oklahoma as defined in the first section of this act, shall for the purposes of this act, be known as the Indian Territory; and the jurisdiction of the United States court established under and by virtue of an act entitled "An act to establish a United States court in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine, is hereby limited to and shall extend only over the Indian Territory as defined in this section; that the court established by said act shall, in addition to the jurisdiction conferred thereon by said act, have and exercise within the limits of the Indian Territory jurisdiction in all civil cases in the Indian Territory, except cases over which the tribal courts have exclusive jurisdiction; and in all cases on contracts entered into by citizens of any tribe or nation with citizens of the United States in good faith and for valuable consideration, and in accordance with the laws of such tribe or nation, and such contracts shall be deemed valid and enforced by such courts; and in all cases over which jurisdiction is conferred by this act or may hereafter be conferred by act of Congress; and the provisions of this act hereinafter set forth shall apply to said Indian Territory only.

Organization of Courts, how, when and where.

(90) SECTION 30. That for the purpose of holding terms of said court, said Indian Territory is hereby divided into three divisions, to be known as the first, second and third divisions. The first division shall consist of the country occupied by the Indian tribes in the Quapaw Indian Agency and all that part of the

Cherokee country east of the ninety-sixth meridian and all of the Creek country; and the place for holding said court therein shall be at Muskogee. The second division shall consist of the Choctaw country, and the place for holding said court therein shall be at South McAlister. The third division shall consist of the Chickasaw and Seminole countries, and the place for holding said court therein shall be at Ardmore. That the Attorney General of the United States may if in his judgment it shall be necessary, appoint an assistant attorney for said court. And the clerk of said court shall appoint a deputy clerk in each of said divisions in which said clerk does not himself reside at the place in such division where the terms of said court are to be held. Such deputy clerk shall keep his office and reside at the place appointed for holding of said courts in the division of such residence, and shall keep the records of said courts for such division, and in the absence of the clerk may exercise all the official powers of the clerk within the division for which he is appointed: *Provided*, That the appointment of such deputies shall be approved by the United States court in the Indian Territory, and may be annulled by said court at its pleasure, and the clerk shall be responsible for the official acts and negligence of his respective deputies. The Judge of said court shall hold at least two terms of said court each year in each of the divisions aforesaid, at such regular times as said judge shall fix and determine, and shall be paid his actual traveling expenses and subsistence while attending and holding court at places other than Muskogee. All jurors for each term of said court, in each division, shall be selected and summoned in the manner provided in said act, three jury commissioners to be selected by said court for each division, who shall possess all the qualifications and perform in said division all the duties required by the jury commissioners provided for in said act. All prosecutions for crimes of offenses hereafter committed in said Indian Territory shall be cognizable within the division in which such crime or offense shall have been committed. And all civil suits shall be brought in the division in which the defendant or defendants reside; but if there be two or more defendants residing in different divisions, the action may be brought in any division in which either of the defendants resides. And all cases shall be tried in the division in which the process is returnable as herein provided, unless said judge shall direct such case to be removed to one of the other divisions: *Provided, however*, That the judicial tribunals of the Indian nations shall retain exclusive jurisdiction in all civil and criminal cases arising in the country in which members of the nation by nativity or by adoption shall be the only parties; and as to all such cases the laws of the State of Arkansas extended over and put in force in said Indian Territory by this act shall not apply.

Extending certain general laws of Arkansas over Indian Territory

(91) SECTION 31. That certain general laws of the State of Arkansas in force at the close of the session of the general assembly of that State of eighteen hundred and eighty-three, as published in eighteen hundred and eighty-four, in the volume known as Mansfield's Digest of the Statutes of Arkansas, which are not

locally inapplicable or in conflict with this act or with any law of Congress, relating to the subjects specially mentioned in this section, are hereby extended over and put in force in the Indian Territory until Congress shall otherwise provide, that is to say, the provisions of the said general statutes of Arkansas relating to administration, chapter one, and the United States court in the Indian Territory herein referred to shall have and exercise the powers of courts of probate under said laws; to public administrators, chapter two, and the United States Marshal of the Indian Territory shall perform the duties imposed by said chapter on the Sheriffs of said State; to arrest and bail, civil, chapter seven; to assignment for benefit of creditors, chapter eight; to attachments, chapter nine; to attorneys at law, chapter eleven; to bills of exchange and promissory notes, chapter fourteen; to civil rights, chapter eighteen; to common and statute law of England, chapter twenty; to contempts, chapter twenty-six; to municipal corporations, chapter twenty-nine, division one; to costs, chapter thirty; to decents and distributions, chapter forty-nine; to divorce, chapter fifty two, and said court in the Indian Territory shall exercise the powers of the circuit courts of Arkansas under this chapter; to dower, chapter fifty-two; to evidence, chapter fifty-nine; to execution, chapter sixty; to fees, chapter sixty-three; to forcible entry and detainer, chapter sixty-seven; to frauds, statute of, chapter sixty-eight; to fugitives from justice, chapter sixty-nine; to gaming contracts, chapter seventy; to guardians, curators, and wards, chapter seventy-three, and said court in the Indian Territory shall appoint guardians and curators; to *habeas corpus*, chapter seventy-four; to injunction, chapter eighty-one; to insane persons and drunkards, chapter eighty-two, and said court in the Indian Territory shall exercise the powers of the probate courts of Arkansas under this charter; to joint and several obligations and contracts, chapter eighty-seven; to judgments and decrees, chapter eighty-eight; to judgments summary, chapter eighty-nine; to jury, chapter ninety; to landlord and tenant, chapter ninety-two; to legal notices and advertisements, chapter ninety-four; to liens, chapter ninety-six; to limitations, chapter ninety-seven; to mandamus and prohibition, chapter one hundred; to marriage contracts, chapter one hundred and two; to marriages, chapter one hundred and three; to married women, chapter one hundred and four; to money and interest, chapter one hundred and nine; to mortgages, chapter one hundred and ten; to notaries public, chapter one hundred and eleven, and said court in the Indian Territory shall appoint notaries public under this chapter; to partition the sale of lands, chapter one hundred and fifteen; to pleadings and practice, chapter one hundred nineteen; to recorders, chapter one hundred and twenty-six; to replevin, chapter one hundred and twenty-eight; to venue, change of, chapter one hundred and fifty-three; and to wills and testaments, chapter one hundred and fifty-five; and whenever in said laws of Arkansas the courts of record of said State are mentioned the said court in the Indian Territory shall be substituted therefor; and whenever the clerks of said courts

are mentioned in said laws the clerk of said court in the Indian Territory and his deputies, respectively, shall be substituted therefor; and wherever the sheriff of the county is mentioned in said laws the United States Marshal of the Indian Territory shall be substituted therefor, for the purpose, in each of the cases mentioned, of making said laws of Arkansas applicable to the Indian Territory.

No attachments to issue against improvements on Indian lands, except when.

That no attachment shall issue against improvements on real estate while the title to the land is vested in any Indian Nation, except where such improvements have been made by persons, companies or corporations operating coal or other mines, railroads, or other industries under lease or permission of law of an Indian national council, or charter, or law of the United States.

Executions valid when

That executions upon judgments obtained in any other than Indian courts shall not be valid for the sale or conveyance of title to improvements made upon lands owned by an Indian Nation, except in the cases wherein attachments are provided for. Upon a return of *nulla bona*, upon an execution upon any judgment against an adopted citizen of any Indian tribe, or against any person residing in the Indian country and not a citizen thereof, if the judgement debtor shall be the owner of any improvements upon real estate within the Indian Territory in excess of one hundred and sixty acres occupied as a homestead, such improvements may be subjected to the payment of such judgment by a decree of the court in which such judgment was rendered. Proceedings to subject such property to the payment of judgments may be by petition, of which the judgment debtor shall have notice as in the original suit. If on the hearing the court shall be satisfied from the evidence that the judgment debtor is the owner of improvements on real estate subject to the payment of said judgment the court may order the same sold, and the proceeds, or so much thereof as may be necessary to satisfy said judgments and costs, applied to the payment of said judgment; or if the improvement is of sufficient rental value to discharge the judgment within a reasonable time the court may appoint a receiver, who shall take charge of such property and apply the rental receipts thereof to the payment of such judgment, under such regulations as the court may prescribe. If under such proceeding any improvement is sold only citizens of the tribe in which said property is situate may become the purchaser thereof.

Court may order improvements sold when Receiver can be appointed under certain conditions.

The Constitution of the United States and all general laws of the United States which prohibit crimes and misdemeanors in any place within the sole and exclusive jurisdiction of the United States, except in the District of Columbia, and all laws relating to national banking associations, shall have the same force and effect in the Indian Territory as elsewhere in the United States; but nothing in this act shall be so construed as to deprive any of the courts of the civilized nations of exclusive jurisdiction over all cases arising wherein members of said nations, whether by treaty, blood, or adoption, are the sole parties, nor so as to interfere with the right and power of said civilized nations to punish said members for violation of the statutes and laws enacted by their

national councils where such laws are not contrary to the treaties and laws of the Uuited States.

Defining the application of certain words.

(92) SECTION 32. That the word "county," as used in any of the laws of Arkansas which are put in force in the Indian Territory by the provisions of this act, shall be construed to embrace the territory within the limits of a judicial division in said Indian Territory; and whenever in said laws of Arkansas the word "county" is used, the words "judicial division" may be substituted therefor, in said Indian Territory, for the purposes of this act. And whenever in said laws of Arkansas the word "State" or the words "State of Arkansas" are used, the word "Territory" or the words "Indian Territory" may be substituted therefor, for the purposes of this act, and for the purpose of making said laws of Arkansas applicable to the said Indian Territory; but all prosecutions therein shall run in the name of the "United States."

Defining jurisdiction of certain Courts of Indian Territory, Texas and Arkansas.

(93) SECTION 33. That the provisions of chapter forty-five of the said general laws of Arkansas, entitled "Criminal Law," except as to the crimes and misdemeanor mentioned in the *proviso* to this section, and the provisions of chapter forty-six of said general laws of Arkansas, entitled "Criminal Procedure," as far as they are applicable, are hereby extended over and put in force in the Indian Territory, and jurisdiction to enforce said provisions is hereby conferred npon the United States Court therein: *Provided*, That in all cases where the laws of the United States and the said criminal laws of Arkansas have provided for the punishment of the same offenses the laws of the United States shall govern as to such offenses. *And provided further*, That the United States Circuit and District Courts, respectively, for the western district of Arkansas and the eastern district of Texas, respectively, shall continue to exercise exclusive jurisdiction as now provided by law in the Indian Territory as defined in this act, in their respective districts as heretofore established, over all crimes and misdemeanors against the laws of the United States applicable to the said Territory, which are punishable by said laws of the United States by death or by imprisonment at hard labor, except as otherwise provided in the other sections of this act.

(94) SECTION 34. That original jurisdiction is hereby conferred upon the United States Court in the Indian Territory to enforce the provisions of title twenty-eight, chapters three and four, of the Revised Statutes of the United States, in said Territory, except the offenses defined and embraced in sections twenty-one hundred and forty-two and twenty-one hundred and forty-three: *Provided*, That as to the violations of the provisions of section twenty-one hundred and thirty-nine of said Revised Statutes, the jurisdiction of said court in the Indian Territory shall be concurrent with the jurisdiction exercised in the enforcement of such provisions by the United States Courts for the western district of Arkansas and the eastern district of Texas: *Provided*, That all violation of said chapters three and four, prior to the passage of this act, shall be prosecuted in the United States Courts, respectively, the same as if this act had not been passed.

(95) SECTION 35. That exclusive original jurisdiction is here-

by conferred upon the United States Court in the Indian Territory to enforce the provisions of chapter four, title seventy, of the Revised Statutes of the United States, entitled "Crimes against Justice," in all cases where the crimes mentioned therein were committed in any judicial proceeding in the Indian Territory and where such crimes affected and impeded the enforcement of the laws in the courts established in said Territory: *Provided*, That all violations of the provisions of said chapter prior to the passage of this act shall be prosecuted in the United States Courts for the western district of Arkansas and the eastern district of Texas, respectively, the same as if this act had not been passed.

(96) SECTION 36. That jurisdiction is hereby conferred upon the United States Court in the Indian Territory over all controversies arising between members or citizens of one tribe or nation of Indians and the members or citizens of other tribes or nation in the Indian Territory, and any citizen or member of one tribe or nation who may commit any offense or crime against the person or property of a citizen or member of another tribe or nation shall be subject to the same punishment in the Indian Territory as he would be if both parties were citizens of the United States. And any member or citizen of any Indian tribe or nation in the Indian Territory shall have the right to invoke the aid of said court therein for the protection of his person or property as against any person not a member of the same tribe or nation, as though he were a citizen of the United States.

Prohibiting lotteries and games of chance.

(97) SECTION 37. That if any person shall, in the Indian Territory, open, carry on, promote, make or draw, publicly or privately, any lottery or scheme of chance of any kind or description, by whatever name, style or title the same may be denominated or known, or shall, in said Territory, vend, sell, barter or dispose of any lottery ticket or tickets, order or orders, device or devices, of any kind, for or representing any number of shares or any interest in any lottery or scheme of chance or shall open or establish as owner or otherwise any lottery or scheme of chance in said Territory, or shall be in any wise concerned in any lottery or scheme of chance, by acting as owner or agent in said Territory, for or on behalf of any lottery or scheme of chance, to be drawn, paid or carried on, either out or within said Territory, every such person shall be deemed guilty of a misdemeanor, and. on conviction thereof, shall be fined for the first offense, not exceeding five hundred dollars, and for the second offense shall, on conviction, be fined not less than five hundred dollars and not exceeding five thousand, and he may be imprisoned, in the discretion of the court, not exceeding one year. And jurisdiction to enforce the provisions of this section is hereby conferred upon the United States Court in said Indian Territory, and all persons therein, including Indians and members and citizens of Indian tribes and nations, shall be subject to its provisions and penalties.

Relating to marriages.

(98) SECTION 38. The clerk and deputy clerks of said United States Court shall have the power within their respective districts to issue marriage licenses or certificates and to solemnize marriages. They shall keep copies of all marriage licenses or certificates issued

by them, and a record book in which shall be recorded all licenses or certificates after the marriage has been solemnized, and all persons authorized by law to solemnize marriages shall return the license or certificate, after executing the same, to the clerk or deputy clerk who issued it, together with his return thereon. They shall also be *ex-officio* Recorders within their respective districts, and as such they shall perform such duties as are required of Recorders of Deeds under the said laws of Arkansas, and receive the fees and compensation therefor which are provided in said laws of Arkansas for like service: *Provided*, That all marriages heretofore contracted under the laws or tribal customs of any Indian nation now located in the Indian Territory are hereby declared valid, and the issue of such marriages shall be deemed legitimate and entitled to all inheritances of property or other rights, the same as in the case of the issue of other forms of lawful marriage: *Provided, further*, That said chapter one hundred and three of said laws of Arkansas shall not be construed so as to interfere with the operation of the laws governing marriage enacted by any of the civilized tribes, nor to confer any authority upon any officer of said court to unite a citizen of the United States in marriage with a member of any of the civilized nations until the preliminaries to such marriage shall have first been arranged according to the laws of the nation of which said Indian person is a member: *And provided further*, That where such marriage is required by law of an Indian nation to be of record, the certificate of such marriage shall be sent for record to the proper officer, as provided in such law enacted by the Indian nation.

United States Commissioners, by whom appointed and jurisdiction.

(99) SECTION 39. That the United States Court in the Indian Territory shall have all the powers of the United States Circuit Court or Circuit Court Judges to appoint commissioners within said Indian Territory, who shall be learned in the law, and shall be known as United States Commissioners; but not exceeding three commissioners shall be appointed for any one division, and such commissioners when appointed shall have, within the division designated in the order appointing them, all the powers of commissioners of circuit courts of the United States. They shall be *ex-officio* notaries public, and shall have power to solemnize marriages. The provisions of chapter ninety-one of the said laws of Arkansas, regulating the jurisdiction and procedure before Justices of the Peace, are hereby extended over the Indian Territory; and said commissioners shall exercise all the powers conferred by the laws of Arkansas upon Justices of the Peace within their districts; but they shall have no jurisdiction to try any cause where the value of the thing or the amount in controversy exceeds one hundred dollars.

Appeals.

Appeal may be taken from the final judgment of said commissioners to the United States Court in said Indian Territory in all cases and in the same manner that appeals may be taken from the final judgments of Justices of the Peace under the provisions of said chapter ninety-one. The said court may appoint a constable for each of the commissioner's districts designated by the court, and the constable so appointed shall perform all the duties required

of constables under the provisions of chapter twenty-four and other laws of the State of Arkansas. Each commissioner and constable shall execute to the United States, for the security of the public, a good and sufficient bond, in the sum of five thousand dollars, to be approved by the judge appointing him, conditioned that he will faithfully discharge the duties of his office and account for all moneys coming to his hands, and he shall take an oath to support the Constitution of the United States and to faithfully perform the duties required of him.

The appointment of United States commissioners by said court held at Muscogee, in the Indian Territory, heretofore made, and all acts in pursuance of law and in good faith performed by them, are hereby ratified and validated.

Providing for arrests for crime.

(100) SECTION 40. That persons charged with any offense or crime in the Indian Territory, and for whose arrest a warrant has been issued, may be arrested by the United States Marshal, or any of his deputies, wherever found in said Territory, but in all cases the accused shall be taken, for preliminary examination, before the commissioner in the judicial district whose office or place of business is nearest by the route usually traveled to the place where the offense or crime was committed; but this section shall apply only to crimes or offenses over which the courts located in the Indian Territory have jurisdiction: *Provided*, That in all cases where persons have been brought before a United States commissioner in the Indian Territory for preliminary examination, charged with the commission of any crime therein, and where it appears from the evidence that a crime has been committed, and that there is probable cause to believe the accused guilty thereof, but that the crime is one over which the courts in the Indian Territory have no jurisdiction, the accused shall not, on that account, be discharged, but the case shall be proceeded with as provided in section ten hundred and fourteen of the Revised Statutes of the United States.

Extradition authority, in whom vested.

(101) SECTION 41. That the Judge of the United States Court in the Indian Territory shall have the same power to extradite persons who have taken refuge in the Indian Territory, charged with crimes in the States or other territories of the United States, that may now be exercised by the governor of Arkansas in that State, and he may issue requisitions upon governors of States or other territories for persons who have committed offenses in the Indian Territory, and who have taken refuge in such States or territories.

Appeals to U. S. Supreme Court.

(102) SECTION 42. That appeals and writs of error may be taken and prosecuted from the decisions of the United States Court in the Indian Territory to the Supreme Court of the United States in the same manner and under the same regulations as from the circuit courts of the United States, except as otherwise provided in this act.

Indians may become citizens.

(103) SECTION 43. That any member of any Indian tribe or nation residing in the Indian Territory may apply to the United States Court therein to become a citizen of the United States, and such court shall have jurisdiction thereof and shall hear and deter-

mine such application as provided in the Statutes of the United States; and the Confederated Peoria Indians, residing in the Quapaw Agency, who have heretofore or who may hereafter accept their land in severalty under any of the allotment laws of the United States, shall be deemed to be, and are hereby, declared to be citizens of the United States from and after the selection of their allotments, and entitled to all the rights, privileges, and benefits as such, and parents are hereby declared from that time to have been and to be the legal guardians of their minor children without process of court: *Provided*, That the Indians who become citizens of the United States under the provisions of this act do not forfeit or lose any rights or privileges they enjoy or are entitled to as members of the tribe or nation of which they belong.

Appropriations

(104) SECTION 44. That the following sum, or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, to be disbursed under the direction of the Attorney General of the United States; in the same manner that similar appropriations are disbursed in the other territories of the United States, namely:

To pay the actual traveling and other expenses of the Judge of the United States Court holding court in said Indian Territory other than at Muskogee; to pay for the rent of buildings for the Supreme and District Courts; to provide jails and support prisoners; to pay mileage and *per diem* of jurors and witnesses; to provide books, records, and stationery for the judicial offices for the remainder of the fiscal year ending June thirtieth, eighteen hundred and ninety, the sum of ten thousand dollars.

REVISED STATUTES.

SEC. 1855—Extra compensation not allowed.
1861—Subordinate officers of legislature.
1887—Prescribing amount for printing.
1888—Must not exceed appropriation.
1909—Providing for appeals to U. S. Supreme Court.
1910—Defining jurisdiction of District Courts
1912—Habeas Corpus.
1914—Defining certain duties of Supreme Court.
1926—Secretary to be *ex-officio* Superintendent of public buildings and grounds.
1921—Administering oaths to legislators.
SEC. 1934—Supreme Court may hold adjourned terms
1941—No salaries due until when.
1948—Laws in force.
1951—Disbursing officers must give bond.
2129—License to trade with Indians.
2133—Penalty.
2139—Prohibiting sale of intoxicants
2296—Lands not subject to payment of debt:
2382—Relating to the location of townsites
2383—Townsites on unsurveyed lands.
2387—Townsites entered by whom
2388—Entry to be made before sale.

[The following sections of the Revised Statutes of the United States are specially referred to, and made part of the foregoing Organic Act, to wit:]

Extra compensation not allowed.

(105) SECTION 1855. No law of any territorial legislature shall be made or enforced by which the Governor or Secretary of a Territory, or the members or officers of any territorial legislature are

paid any compensation other than that provided by the laws of the United States.

Subordinate officers of legislature.

(106) SECTION 1861. The subordinate officers of each branch of every [territorial] legislative assembly shall consist of one Chief Clerk, one Assistant Clerk, one Enrolling Clerk, one Engrossing Clerk, one Sergeant-at-Arms, one Door Keeper, one Messenger, and one Watchman.

Prescribing amount for printing

(107) SECTION 1887. Hereafter no expenses for printing exceeding $4,000, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the territories.

Must not exceed appropriation

(108) SECTION 1888. No legislative assembly of a Territory shall, in any instance. under any pretext, exceed the amount appropriated by Congress for its annual expenses.

Providing for appeals to U. S. Supreme Court

(109) SECTION 1909. Writs of error and appeals from the final decisions of the Supreme Court of [Oklahoma] shall be allowed to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property or the amount in controversy to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars; except that a writ of error or appeal shall be allowed, to the Supreme Court of the United States, from the decision of the Supreme Court [of said Territory] or any Judge thereof upon writs of *habeas corpus*, involving the question of personal freedom.

Defining jurisdiction of district courts.

(110) SECTION 1910. Each of the District Courts in said Territory shall have and exercise the same jurisdiction in all cases arising under the Constitution and Laws of the United States as is vested in the Circuit and District Courts of the United States; and the first six days of every term [of said courts], or so much thereof as is necessary, shall be appropriated to the trial of causes arising under said Constitution and Laws; but writs of error and appeals, in all such cases, may be had to the Supreme Court of said Territory.

Habeas corpus.

(111) SECTION 1912. The Supreme and District Courts of said Territory, and the respective Judges thereof, may grant writs of *habeas corpus* in all cases in which the same are grantable by the Judges of the United States, in the District of Columbia.

Defining certain duties of Supreme Court

(112) SECTION 1914. The Judges of the Supreme Court [of Oklahoma Territory] or a majority of them shall, when assembled at the seat of government, define the judicial districts of said Territory, and assign the Judges to the several districts; and shall also fix the times and places of holding in the several counties or subdivisions of earh district, and alter the times and places of holding the courts, as to them may seem proper and convenient; but not less than two terms a year shall be held at each place of holding court [in said Territory.]

Secretary to be ex officio superintendent of public buildings.

(113) SECTION 1920. The Secretary of the Territory of [Oklahoma] shall be, *ex-officio*, Superintendent of Public Buildings and Grounds, and shall have full control and management of all public buildings, in process of erection or to be hereafter erected, and of all grounds pertaining thereto; and he shall be under the direction

of the Secretary of the Interior, who shall establish such rules in relation to the public buildings and grounds as he may deem necessary.

(114) SECTION 1921. The Secretary of the Territory of [Oklahoma], upon the convening of the legislature thereof shall administer the oath of office to the members-elect of the two Houses, and the officers thereof, when chosen; and no other person shall be competent to administer such oath, save in the absence of the Secretary, in which case any one member of either House may administer the oath to the presiding officer-elect, and he shall administer the same to the members and other officers. Administering oaths to legislators.

(115) SECTION 1934. The Supreme Court of the Territory of [Oklahoma] may hold adjourned terms thereof, at any time and place in the Territory agreed upon by a majority of the Judges of the court, at any regular time thereof. The order for an adjourned term shall be signed by a majority of the Judges thereof at a regular term of the court, and entered upon the minutes of the court; and any business which said court might do, at any regular term thereof, may be done at such adjourned term; and the Clerk of the Court shall be entitled to such mileage for attendance at such ad journed term as is by law allowed the Marshal of the [Territory] for his attendance on the courts of the Territory. Supreme Court may hold adjourned terms

(116) SECTION 1941. No payment of salary shall be made to the Governor, Secretary, Chief Justice, and Associate Justices of [Oklahoma] Territory, until such officers have entered upon the duties of their respective appointments. No salaries due until when.

(117) SECTION 1948. All general territorial laws of the Territory of [Oklahoma] in force in said Territory shall continue in force throughout said Territory until repealed by the legislative authority of that Territory, except such laws as relate to the possession or occupation of mines or mining claims. Laws in force

(118) SECTION 1951. All officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of [Oklahoma] who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give such security at such time and in such manner as the Secretary may prescribe. Disbursing officers must give bond.

(119) SECTION 2129. No person shall be permitted to trade with any of the Indians in the indian country, without a licnse therefor from a Superintendent of Indian Affairs, or Indian Agent, or Sub Agent, which license shall issue for a term not exceeding three years, for the tribes west of the Mississippi river. License to trade with Indians

(120) SECTION 2133. Any person, other than an Indian, who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians, or found in his possession, and shall moreover be liable to a penalty of five hundred dollars. Penalty.

(121) SECTION 2139. No ardent spirits shall be introduced, under any pretense, into the Indian country. Every person, except an Indian in the Indian country, who sells, exchanges, gives, bar- Prohibiting the sale of intoxicants.

ters, or disposes of, any spirituous liquors or wine to an Indian under the charge of the Indian Superintendent or Agent, or introduces or attempts to introduce any spirituous liquors or wine into the Indian country, shall be punishable by imprisonment for not more than two years, and by a fine of not more than three hundred dollars. But it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, that the acts charged were done by order of and under authority from the War Department, or any officer duly authorized thereunto by the War Department.

Lands not subject to payment of debt.

(122) SECTION 2296. No lands acquired under the provisions of this chapter [32] shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the patent thereof.

Relating to the location of townsites.

(123) SECTION 2382. In any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it may be lawful for them to cause to be filed with the Recorder for the county in which the same is situated, a plat thereof for not exceeding six hundred and forty acres, describing its exterior boundaries, according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots and alleys, the size of the same, with measurements and area of each municipal sub-division, the lots in which shall not exceed 4,200 square feet, with a statement of the extent and general character of the improvements; such map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the general land office a verified transcript of such map, and statement accompanied by the testimony of two witnesses that such city or town has been established in good faith, and when the premises are within the limits of any organized land district, a similar map and statement shall be filed with the Register and Receiver, and at any time after the filing of such map, statement and testimony, in the general land office, it may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of ten dollars for each lot; and such lots as may not be disposed of at public sale shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution thereafter, as the Secretary of the Interior may order from time to time after at least three months' notice in view of the increase or decrease in the value of the municipal property. But an actual settler upon any one lot, as above provided, and upon any additional lot, in which he may have substantial improvements, shall be entitled to prove up and purchase the same, as a premption, at such minimum, at any time before the day fixed for the public sale.

Townsites on unsurveyed lands.

(124) SECTION 2383. When such cities or towns are established upon unsurveyed lands, it may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the

premises according to those lines, where it can be done without interference with rights which may be vested by sale; and patents for all lots, so disposed of at public or private sale, shall issue as in ordinary cases.

Townsites entered by whom.

(125) SECTION 2387. Whenever any portion of the public lands have been or may be settled upon and occupied as a town site, not subject to entry under the agricultural pre-emption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the Judge of the County Court, for the county in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied, in trust for the several use and benefits of the occupants thereof, according to their respective interests; the execution oi which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated.

Entry to be made before sale.

(126) SECTION 2388. The entry of the land provided for in the preceding section, shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a townsite shall be filed with the Register of the proper land office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town. * * *

AN ACT

SEC. 127—Townsites in the Indian Teiritory and no Man's Land—how and by whom.
2—Authority for conveyance. Evidence of occupancy not good in certain cases.
3—Lands belonging to religious organizations.
4—Reservation of lands for certain purposes.
5—Kansas laws applying.
6—Powers and compensation of Trustees.
7—Appropriation.
8—Conflicts between townsite and homestead claimants.

To provide for town site entries of lands in what is known as "Oklahoma," and for other purposes.

Townsites in Indian Territory and No-Man's-Land

(127) *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That so much of the public lands situated in the Indian territory and also in the tract of country known as No Man's Land adjoining the Indian territory on the west, as may be necessary to embrace all the legal subdivisions covered by actual occupancy for purposes of trade and business not exceeding one thousand two hundred and eighty acres in each case may be entered as town sites for the several uses and benefits of the occupants thereof by three trustees for each county not more than two of whom shall be of the same political party, to be appointed by the Secretary of the Interior for that purpose and such entry to be made under the provisions of section two thousand three hundred and eighty-seven revised statutes, as near as may be, and when such entry shall have been made the Secretary of the Interior shall provide regulations for the proper execution of the trust, including such survey of the land into streets, alleys, squares, blocks and lots as may be necessary,

How and by whom entered.

or the approval of such surveys as may already have been made by the inhabitants thereof; the assessment on the lots of such sum as may be necessary to pay for the land embraced in such town site, costs of survey, conveyance of lots and other necessary expenses.

Authority for conveyance

(128) SEC. 2. That in the execution of such trust, and for the purpose of the conveyance of the title by said trustee, any certificate or other paper, evidence of claim duly issued by the authority recognized for such purpose by the people residing upon any townsite, the subject of entry hereunder, shall be taken as evidence of occupancy by the holder thereof of the lots therein described, except that where there is an adverse claim to said property such certificate shall be *prima facie* evidence of the claim of occupancy of the holder; provided that nothing in this act contained shall be so construed as to make valid any claim now invalid of those who entered upon and occupied said lands in violation of the laws of the United States or the proclamation of the President; provided further, that the certificates hereinbefore mentioned shall not be taken as evidence in favor of any person claiming lots who entered upon said lots in violation of the law or the proclamation of the President thereunder.

Evidence of occupancy not good in certain cases.

Lands belonging to religious organizations.

(129) SEC. 3. The lots or land occupied by any religious organization, incorporated or otherwise, conforming to approved survey within limits of such townsite shall be conveyed to or in trust for the same.

Reservation of lands for certain purposes

(130) SEC. 4. That all lots not disposed of as hereinbefore provided for shall be sold for the benefit of the municipal government of any such town, or the same or part thereof may be reserved for public use as sites for public buildings, or for the purpose of parks, if in the judgment of the Secretary of the Interior such reservation would be for the public interest.

Kansas laws applying.

(131) SEC. 5. That the provisions of sections four, five, six, seven, eight, nine and ten, of an Act of the Legislature of the State of Kansas, entitled "An Act relating to town sites," approved March 2, 1868, shall, as far as applicable, govern the Trustees in the performance of their duties. [See complete copy of these sections below.]

Powers and compensation of trustees.

(132) SEC. 6. That the Trustees appointed under this act shall have the power to administer oaths, shall keep a record of their proceedings, which they shall, with all papers filed with them, and all evidence of their official acts except conveyances, be filed in the General Land Office and become part of the records of the same. They shall be allowed such compensation as the Secretary of the Interior may prescribe, not exceeding ten dollars per day while actually employed, and the Secretary of the Interior shall also provide them with necessary clerical force by detail or otherwise.

Appropriations

(133) SECTION 7. That the sum of ten thousand dollars or as much thereof as may be necessary, is hereby appropriated to carry into effect the provisions of this act.

Conflicts between townsite and homestead claimants.

(134) SECTION 8. That whenever there is a conflict between a homestead claimant and the occupants of a town site for any portion of the tract sought to be entered under the provisions of this

act the same shall take precedence of the ordinary business of the office, and [be] heard and determined as soon as practicable by the Register and Receiver of the District in which the land is situated; and if an appeal shall be taken from the decision of the local office in any case disposed of hereinunder, or from the decision and determination of the said Commissioners, to the Commissioner of the General Land Office, the same shall be made special and disposed of by him as expeditiously as the duties of his office will permit, and so if an appeal should be taken to the Secretary of the Interior.

(135) SECTION 9. That all town site applications heretofore filed in the proper land office shall have the same force and effect as if made under the provisions of this act, and upon the application of the Commissioners provided for herein such town site entry shall be allowed in the name of said Commissioners as Trustees, upon the applications theretofore filed, but nothing herein contained shall be construed as extending to the rights of the town site or any claimant thereto or therein, or of impairing rights heretofore secured under existing law.

Approved May—1890.

THE KANSAS STATUTE.

SEC. 4—Appointing commissioners.
5—Duties of
6—Distribution of lots.
7—Levying tax.
8—Shall make return in ten days.
9—Collection of taxes and auctioning lots.
10—Re-imbuisement for expenses.

[The sections of the Kansas Statute referred to in section four and made a part of the above are as follows:]

(136) SECTION 4. At any time after the entry of any town site, the Probate Judge of the county in which such town may be situated may appoint three Commissioners, who shall not be residents of such town, or the owners of any interest therein; and it shall be the duty of such Commissioners to cause an actual survey of such town site to be made, conforming as near as may be to the original survey of such town, designating, on such plat, the lots or squares on which improvements are standing, with the name of owner or owners thereof, together with the value of the same. Appointing Commissioners.

(137) SEC. 5. Said Commissioners shall, as soon as the survey and plat shall be completed, cause to be published in some newspaper published in the county in which the town is situated, a notice that such survey has been completed, and giving notice to all persons concerned or interested in such town site that on a designated day, the said Commissioners will proceed to set off to the persons entitled to the same, according to their respective interests, the lots, squares or grounds to which each of the occupants thereto is entitled. Such publication shall be made at least thirty days prior to the day set apart by such Commissioners to make such decision. Duties of.

(138) SEC. 6. After such publication shall have been duly made, the Commissioners shall proceed, on the day designated in such publication, to set apart to the persons entitled to receive Distribution of lots

the same, the lots, squares or grounds to which each shall be entitled, according to their respective interests, including in the portion or portions set apart to each person or company of persons, the improvements belonging to such persons or company.

Levying tax.

(139) SECTION 7. After the setting apart of such lots of ground and the valuation of the same, as hereinbefore provided for, the said Commissioner shall proceed to levy a tax on the lots and improvements thereon, according to their value, sufficient to raise a fund to reimburse the parties who may have entered such site, the sum or sums paid by them in securing the title to such site, together with all the expenses accruing in perfecting the same, the fees due the Commissioners and the Surveyor, for their respective services, and other necessary expenses connected with the proceedings.

Shall make return in ten days

(140) SECTION 8. Such Commissioners shall make due return of their proceedings to the Probate Judge, within ten days after the completion of their duties under this act, and shall, with such return, file all the papers, plats, valuations and assessments connected with such proceedings.

Collection of taxes and auctioning lots

(141) SECTION 9. The Probate Judge shall then proceed to collect the taxes, levied as aforesaid, and he shall make deeds to the lots so set apart to the various parties entitled to the same; but no deed shall be made to any such person until such person shall have first fully paid all the tax or assessment so levied against him; and in case any person shall refuse or neglect to pay such tax or assessment so made against him, the Probate Judge may proceed to offer such lots and improvements for sale, to the highest bidder, first giving such public notice as may be required in case of execution against the lands and tenements of a debtor in a District Court.

Reimbursement for expenses.

(142) SECTION 10. The Probate Judge shall reimburse the party or parties who may have entered and secured the title to such site, together with all necessary expenses incurred, out of the fund thus provided, taking their receipts therefor; which receipts shall be filed with the papers returned by the commissioners, and kept by him among the records of the court.

TITLE XXX.[1]

NATURALIZATION.

SECTION.
2165. Aliens, how naturalized.
2166. Aliens honorably discharged from military service.
2167. Minor residents.
2168. Widow and children of declarants.
2169. Aliens of African nativity and descent.
2170. Residence of five years in United States.
2171. Alien enemies not admitted.
2172. Children of persons naturalized under certain laws.
2173. Police court of District of Columbia has no power to naturalize foreigners.
2174. Naturalization of seamen.

(143) SECTION 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise: Aliens, how naturalized.

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and, particularly, by name, to the prince, potentate, state or sovereignty of which the alien may be at the time a citizen or subject. Declaration of intentions.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or soverignty; and, particularly, by name, to the prince, potentate, state or sovereignty of which he was before a citizen or subject; which proceeding shall be recorded by the clerk of the court. Oath to support constitution.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders Titles of nobility to be renounced

[1] Naturalization laws of the United States from the Revised Statutes of the United States of 1878.

of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Persons residing in the United States before January 29, 1795.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreige prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Persons residing between 18 June, 1798, and 18 June, 1812.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

(Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the Revised Statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five ; and all such declarations heretofore made before any such clerk, are hereby declared as legal and valid as if made before one of the courts named in said section)

Aliens honorably discharged from military service.

(144) SECTION 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

Minor residents.

(145) SECTION 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted as a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted as a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his *bona fide* intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Widow and children of the declarants.

(146) SECTION 2168. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Aliens of African nativity.

(147) SECTION 2169. The provisions of this title shall apply to aliens (being free white persons, and to aliens) of African nativity and to persons of African descent.

Residence of five years in United States.

(148) SECTION 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided in the United States.

Alien enemies not admitted.

(149) SECTION 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration

according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such enemy.

Children of persons naturalized under certain laws to be citizens.

(150) SECTION 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

Police court, District of Columbia,

(151) SECTION 2173. The police court of the District of Columbia shall have no power to naturalize foreigners.

Naturalizatio n of seamen

(152) SECTION 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant-vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

THE

General Statutes of the Territory of Oklahoma.

CHAPTER I.—AGENTS AND AGENCIES.

[Took effect December 25, 1890]

ARTICLE.
1. Agents.
2. Factors.
3. Agency.
4. Authority of agents.
5. Mutual obligations of principals and third persons.
6. Obligations of agents of third persons.
7. Delegation of agency.
8. Termination of agency.
9. Auctioneers.
10. Factors.
11. Shipmasters and pilots.
12. Ship's manager.

ARTICLE 1.—AGENTS.

SECTION.
1. Exceeding authority.
2. Inform principal to acts.
3. Collecting agents.
4. Sub-agents.

(153) § **1.** An agent must not exceed the limits of his actual authority, as defined by the article on agency. *Agent must not exceed his authority*

(154) § **2.** An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency. *He must inform his principal.*

(155) § **3.** An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor, and, if it is a bill of exchange, must present it for acceptance with reasonable diligence. *Collecting agent.*

(156) § **4.** A mere agent of an agent is not responsible as such to the principal of the latter. *Responsibility of sub-agent.*

ARTICLE 2.—FACTORS.

SECTION.
1. Factor defined.
2. Must obey principal.
3. Usual credit given.
4. Guarantee commission.
5. Relieved by consent of principal.

(157) § **1.** The factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser. *Factor defined.*

(158) § **2.** A factor must obey the instructions of his principal, to the same extent as any other employe, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell *He must obey principal..*

at the market price, he may nevertheless sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee[bailee].

He may give usual credit.

(159) § **3.** A factor may sell property consigned to him on such credit as is usual, but, having once agreed with the purchaser upon the terms of credit, may not extend it.

Liability under guaranty commission.

(160) § **4.** A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

Relieved only by consent of principal.

(161) § **5.** A factor who receives property for sale under a general agreement or usage to guaranty the sales, or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal.

ARTICLE 3.—AGENCY.

SECTION.
1. Agency defined.
2. Qualification of agents.
3. Special and general agents.
4. Agency classified.
5. Actual agency.
6. Ostensible agency.

Agency defined.

(162.) § **1.** An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

Qualifications of agents.

(163.) § **2.** Any person having capacity to contract, may appoint an agent; and any person may be an agent.

Special and general agents.

(164.) § **3.** An agent for a particular act or transaction is called a special agent. All others are general agents.

Classified.

(165.) § **4.** An agency is either actual or ostensible.

Actual agency.

(166.) § **5.** An agency is actual when the agent is really employed by the principal.

Ostensible agency.

(167.) § **6.** An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent, who is not really employed by him.

ARTICLE 4.—AUTHORITY OF AGENTS.

SECTION.
1. Powers of agents.
2. Lawful acts.
3. Defraud principal.
4. How created.
5. No consideration necessary.
6. Form of authority.
7. Form of ratification.
8. Part includes whole.
9. Ratification void, when.
10. Retroactive ratification.
11. Rescission of ratification.
12. Authority extends, how far.
13. Actual authority.
14. Ostensible authority,
15. Legal construction.
16. Necessary authority.
17. Agents may disobey instructions, when.
18. General and specific powers.
19. Exceptions to general powers.
20. Implied authority as to personal property.
21. Same as to realty.
22. May receive price.
23. Same—Limited power.

Powers of agents.

(168.) § **1.** An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

(169.) § **2.** Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears. Any lawful act.

(170) § **3.** An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal. No authority to defraud principal

(171) § **4.** An agency may be created, and an authority may be conferred, by a precedent authorization, or a subsequent ratification. How agency may be created.

(172) § **5.** A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal. No consideration necessary.

(173) § **6.** An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing. Form of authority

(174) § **7.** A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or, where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof. Form of ratification.

(175) § **8.** Ratification of part of an invisible transaction is a ratification of the whole. Part includes whole.

(176) § **9.** A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act. Ratification void when.

(177) § **10.** No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent. Retroactive ratification, when not valid.

(178) § **11.** A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise. Rescissions of ratification.

(179) § **12.** An agent has such authority as the principal, actually or ostensibly, confers upon him. Authority, how extensive.

(180) § **13.** Actual authority is such as a principal intentionally confers upon the agent, or intentionally or by want of ordinary care, allows the agent to believe himself to possess. Actual authority.

(181) § **14.** Ostensible authority is such as a principal intentionally, or by want of ordinary care, causes or allows a third person to believe the agent to possess. Ostensible authority.

(182) § **15.** Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority. Legal construction.

(183) § **16.** An agent has authority. Necessary authority

First. To do everything necessary, or proper and usual in the ordinary course of business, for effecting the purpose of his agency; and,

Second. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which can not

be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

Agent may disobey instructions, when.

(184) § **17.** An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

General and specific powers

(185) § **18.** When an authority is given partly in general and partly in specific terms the general authority gives no higher powers than those specifically mentioned.

Exemptions to general powers.

(186) § **19.** An authority expressed in general terms, however broad, does not authorize an agent:

First. To act in his own name, unless it is the usual course of business to do so.

Second. To define the scope of his agency; or,

Third. To do any act which a trustee is forbidden to do by article 2, of chapter 1, of title 8, as follows:

[SECTION 3921. In all matters connected with his trust a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter, by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

SECTION 3922. A trustee may not use or deal with the trust property for his own benefit, or for any other purpose unconnected with the trust, in any manner.

SECTION 3923. Neither a trustee, nor any of his agents, may take part in any transaction concerning the trust, in which he, or any one for whom he acts as agent, has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

First. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so.

Second. When the beneficiary not having power to contract, the district court, upon the like information of the facts, grants the like permission; or,

Third When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the district court for the latter, in the manner above prescribed.

SECTION 3924. A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

SECTION 3925. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest to his beneficiary in the subject of the trust, without the consent of the latter.

SECTION 3926. If a trustee acquires any interest, or becomes charged with any duty adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

SECTION 3927. Every violation of the provisions of the pre-

ceding sections of this article is a fraud against the beneficiary of the trust.

SECTION 3928. All transactions between a trustee and his beneficiary, during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration and under undue influence.

SECTION 3929. A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

SECTION 3930. A trustee who uses or disposes of the trust property, contrary to section 3922 may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds with interest.

SECTION 3931. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interest of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

SECTION 3932. A trustee is responsible for the wrongful acts of a co-trustee, to which he consented, or which by his negligence he enabled the latter to commit, but for no others.—Dakota Code.]

Implied authority.

(187) § **20.** An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

Same as to realty.

(188) § **21.** An authority to sell and convey real property includes authority to give the usual covenants of warranty.

May receive price.

(189) § **22.** A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

Limitation of the power to receive price.

(190) § **23.** A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

ARTICLE 5.—MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS

Section.
1. Principal affected by agent
2 Incomplete execution.
3. Notice to one is notice to both.
4. Authority of agent exceeded.
5. Principal bound by certain acts.
6. Principal exonerated, when
7. Set-offs against agent.
8. Construction of contract.
9. Negligence of agent.
10. Principal how far responsible.

Principal affected by agent.

(191) § **1.** An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

Incomplete execution.

(192) § **2.** A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

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Notice to one is notice to both

(193) § **3.** As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

Authority of agent exceeded

(194) § **4.** When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

Principal bound by certain acts.

(195) § **5.** A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability, or parted with value, upon the faith thereof.

Principal exhonorated, when.

(196) § **6.** If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made to him by his agent, in good faith, before receiving notice of the creditor's election to hold him responsible.

Set-offs against agents

(197. § **7.** One who deals with an agent, without knowing or having reason to believe that the agent acts as such in the transaction, may set-off, against any claim of the principal arising out of the same, all claims which he might have set-off against the agent before notice of the agency.

Construction of contract.

(198) § **8.** Any instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him, if such intent is plainly inferable from the instrument itself.

Negligence of agents

(199) § **9.** Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business; and for his wilful omission to fulfill the obligations of the principal.

Principal responsible for no other wrongs.

(200) § **10.** A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

ARTICLE 6—OBLIGATIONS OF AGENTS TO THIRD PERSONS.

SECTION.		SECTION.	
1.	Warranty of authority.	3.	Surrender of property to third persons.
2.	Agent responsible to third persons.	4.	Incapacity to contract.

Warranty of authority.

(201) § **1.** One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

Agent responsible to third parties

(202) § **2.** One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

First. When, with his consent, credit is given to him personally in a transaction;

Second. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so, or,

Third When his acts are wrongful in their nature.

Surrender of property to third person.

(203) § **3.** If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal in good faith, on account of the same, and is responsible therefor, if after notice from the owner, he delivers it to his principal.

Incapacity to contract.

(204) § **4.** The provisions of this article are subject to the provisions of part 1 of the first division of the Dakota code as follows:

SECTION 2509. Minors are:

First. Males under twenty-one years of age.

Second. Females under eighteen years of age.

The periods thus specified must be calculated from the first minute of the day on which persons are born, to the same minute of the corresponding day completing the period of minority.

SECTION 2510. All other persons are adults.

SECTION 2511. A child conceived, but not born, is to be deemed an existing person so far as may be necessary for its interests in the event of its subsequent birth.

SECTION 2512. Persons of unsound mind within the meaning of this code, are idots, lunatics, and imbeciles.

SECTION 2513. The custody of minors is regulated by the chapter on guardian and wards.]

SECTION 2514. A minor cannot give a delegation of power, nor, under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control.

SECTION 2515. A minor may make any other contract than as above specified in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this title, and subject to the provisions of the titles on marriage, and on master and servant.

SECTION 2516. In all cases other than those specified in sections 2517 and 2518, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within one year's time afterwards; or in case of his death within that period; by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received or paying its equivalent with interest.

SECTION 2517. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

SECTION 2518. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

SECTION 2519. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the

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reasonable value of things furnished to him necessary for his support or the support of his family.

SECTION 2520. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission as provided in the chapter of rescission of this code.

SECTION 2521. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor designate any power, nor waive any right, until his restoration to capacity is judicially determined. But if actually restored to capacity, he may make a will, though his restoration is not thus determined.

SECTION 2522. A minor, or a person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, in like manner as any other person.

SECTION 2523. A minor or person of unsound mind, cannot be subjected to exemplary damages, unless at the time of the act he was capable of knowing that it was wrongful.

SECTION 2524. A minor may enforce his rights by civil action, or other legal proceedings, in the manner as a person of full age, except that a guardian must be appointed to conduct the same.

SECTION 2525. Indians resident within this Territory have the same rights and duties as other persons, except that:

First. They cannot vote or hold office, and that;

Second. They cannot grant, lease or incumber Indian lands, except in cases provided by special laws.—Dakota Code.]

ARTICLE 7.—DELEGATION OF AGENCY.

SECTION.		SECTION.	
1.	Delegate powers, when.	3	Rightful sub-agent.
2.	Agent becomes principal.		

When agent can delegate his powers.

(205) § **1.** An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

First. When the act to be done is purely mechanical.

Second. When it is such as the agent cannot himself, and the sub-agent can, lawfully perform.

Third. When it is the usage of the place to delegate such powers; or,

Fourth. When such delegation is especially authorized by the principal

Agent is principal when powers are delegated.

(206) § **2.** If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

Rightful sub-agent.

(207) § **3.** A sub-agent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the sub-agent.

ARTICLE 8.—TERMINATION OF AGENCY.

SECTION.
1. Causes of termination.
2. Other causes.

Classified causes of termination.

(208) § **1.** An agency is terminated, as to every person having notice thereof, by:

First. The expiration of its term.

Second. The extinction of its subject.

Third. The death of the agent.

Fourth. His renunciation of the agency; or,

Fifth. The incapacity of the agent to act as such.

Other causes of termination

(209) § **2.** Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated as to every person having notice thereof, by:

First. Its revocation by the principal.

Second. His death; or,

Third. His incapacity to contract.

ARTICLE 9.—AUCTIONEERS.

SECTION.
1. Auctioneer's authority from seller.
2. Authority to bind both parties.

Auctioneer's authority from seller.

(210) § **1.** An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows:

First. To sell by public auction to the highest bidder.

Second. To sell for cash only, except such articles as are usually sold on credit at auction.

Third. To warrant in like manner with other agents to sell, according to section 3985.

[SECTION 3985. An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.—Dakota Code.]

Fourth. To prescribe reasonable rules and terms of sale.

Fifth. To deliver the thing sold, upon the payment of the price.

Sixth. To collect the price; and,

Seventh. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

Authority to bind both parties.

(211) § **2.** An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract as prescribed in the title on sale.

ARTICLE 10.—FACTORS.

SECTION.
1. Factor defined.
2. Has power beyond agent.
3. Ostensible authority.

Factor defined.

(212) § **1.** A factor is an agent, who is employed to buy or sell property in his own name, and who is intrusted by his principal with the possession thereof, as defined in section 3791.

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[SECTION 3791. The factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.—Dakota Code.]

Has power beyond agent

(213) § **2.** In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted:

First. To insure property consigned to him uninsured.

Second. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,

Third. To delegate his authority to his partner or servant, but to any person in an independant employment.

Ostensible authority of factor.

(214) § **3.** A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

ARTICLE XI.—SHIPMASTERS AND PILOTS.

SECTION.
1. Master is general agent.
2. May borrow money.
3 Agent for owner of cargo.
4. May make certain contracts.
5. May hypothecate ship and cargo.
6. May sell ship.
7 May sell cargo.
8. May pay ransom.
9. Power ceases, when.
10 Personal liability.
11. Liability to third persons.
12. Responsible for pilot.

Master of ship is general agent.

(215) § **1.** The master of a ship is a general agent for its owner in all matters concerning the same.

May borrow money.

(216) § **2.** The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay.

Is agent for owner of the cargo

(217) § **3.** The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, except to sell or hypothecate the same.

Master may make certain contracts.

(218) § **4.** The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and in foreign port may enter into a charter-party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.

Master may hypothecate ship and cargo

(219) § **5.** The master of a ship may hypothecate the ship, freightage and cargo, in the cases prescribed by the chapters on bottomry and respondentia, and in no others.

Master may sell ship.

(220) § **6.** When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions.

Master may sell cargo

(221) § **7.** The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no

other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

May pay ransom

(222 § **8.** The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage and cargo.

When master's power ceases.

(223) § **9.** The power of the master of a ship to bind its owner, or the owners of a cargo, ceases upon the abandonment of the ship and freightage to insurers.

Master's personal liability.

(224) § **10** Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.

Liability to third persons

(225) § **11.** The master of a ship is liable to third persons for the acts of negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.

Responsible for pilot.

(226) § **12.** The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot whether he employs him or not, he is responsible to third persons.

ARTICLE XII.—SHIP'S MANAGERS.

SECTION.
1. Manager has power to contract.
2. Limitation of authority.

Ship's manager has power to contract.

(227) § **1.** A ship's manager has power to make contracts requsite for the performance of his duties as such; to enter into charter-parties, or make contracts for carriage, and to settle for freightage and adjust averages.

Limitation of authority.

(228) § **2.** Without special authority, a ship's manager cannot borrow money, or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

CHAPTER II.—AGRICULTURAL COLLEGE.

SECTION.
1. Acceptance of congressional appropriations.
2. Governor to transmit copies of act.
3. Location, manner of.
4. Amount of ground; commissioner's compensation.
5. Bonds to issue, how used.
6. Name of college.
7. College may own real estate, through regents.
8. Board of regents.
9. Same, Organization.
10. Same, meetings, expenses
11. Same, disposition of funds, buildings
12. Same, to audit accounts.
13. Course of instruction.
14. Four years course.
15. Salaries.
16. Faculty.
17. President.
18. Pay for student's labor.
19. Faculty, annual report.
20. Regent's report to governor
21. Degrees conferred on students
22. Experimental station.
23. Legislature's acceptance of congressional appropriations.
24. Who to receive congressional appropriations
25. Who admitted as students.

RESOLUTION accepting the provisions of an act of congress entitled "An act to establish agricultural experimental stations in connection with the colleges established in the several states under the provisions of an act approved July second, eighteen hundred and sixty-two," and of the acts supplimentary thereto.

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Be it resolved by the Legislative Assembly of the Territory of Oklahoma:

Acceptance.

(229) § **1.** That the provisions of an act of Congress, entitled "An act to establish agricultural experimental stations in connection with the colleges established in the several states under the provisions of an act approved July second, eighteen hundred and sixty-two, and the acts supplementary thereto," approved March second, eighteen hundred and eighty-seven, are hereby accepted by the Territory of Oklahoma; and the Territory hereby agrees and obligates itself to comply with all the provisions of said act.

Governor to transmit copies.

(230) § **2.** *Resolved*, That upon the approval of this act by the Governor, he is hereby instructed to transmit a certified copy of the same to the Secretary of State and the Secretary of the Interior of the United States.

Approved Oct. 27, 1890.

AN ACT to locate and establish an Agricultural and Mechanical College in Payne county, Oklahoma Territory.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Location, manner.

(231) § **3.** An Agricultural and Mechanical College is hereby located in Payne County. It shall be the duty of the Governor to appoint three competent citizens of said Territory as a board, whose duty it shall be to locate such institution at some point in Payne county and report their actions and doings to the Governor relative thereto, within ninety days after their appointment.

Amount of ground, commissioners compensation

(232) § **4.** Such institution shall not be located by said commissioners upon less than eighty acres of land, suitable and fit for use as an agricultural and experimental station, which land shall be conveyed to such institution for the use and benefit thereof by good and sufficient title thereto. The said board of commissioners to locate said site shall receive as compensation for their services four dollars per day each, for the time actually and necessarily employed, together with all necessary and actual expenses incurred in the discharge of their duties, to be audited and paid out of any fund in the Territorial treasury not otherwise appropriated.

Bonds to issue, how used

(233) § **5.** The said county of Payne or the municipality in or near which the said agricultural college shall be located under this act, shall issue its bonds in the sum of ten thousand dollars and deliver the same to the Secretary of the Territory of Oklahoma to be by him sold for said Territory at not less than their par value, the proceeds thereof to be by the Secretary turned over to the Treasurer thereof, to be placed to the credit of such institution, such bonds to run twenty years after the date of their issuance and draw five per cent interest, payable semi-annually, and to be issued in the denominations of one thousand dollars each, with interest coupons thereto attached: *Provided*, If such county or municipality shall fail or refuse to issue such bonds or convey said lands after demands made therefor by such board, such insti-

tution may be re-located elsewhere: *Provided further*, That a majority of the qualified voters of said county or municipality shall at an election called for that purpose, vote "for" the proposition to issue such bonds. The proceeds arising from sale of such bonds shall be used only in the erection of the building for such institution, such bonds shall be payable to bearer.

Name of college.

(234) § **6.** Such institution shall be designated "The Agricultural and Mechanical College of the Territory of Oklahoma," and shall be an institution corporate under the laws of the Territory of Oklahoma, and the government and management thereof is hereby vested in a board of regents to be known as the "Agricultural and Mechanical College Board of Regents."

May own real estate.

(235) § **7.** Such college by its regents, may take title to real estate, enter into contracts for the location of buildings and do all things necessary to make it effective as an educational institution.

Board of regents.

(236) § **8.** Such board of regents shall consist of five members, and the Governor of the Territory who shall be *ex-officio* member of such board. The Governor shall nominate and appoint such regents, who shall hold their offices two of them for two years and three of them for four years, and until their successors shall be appointed and confirmed biennially by the Legislative Council: *Provided, however*, That if there be organized a Territorial Board of Agriculture, such board may at its meeting designate two persons to be appointed members of the board of regents, and when so designated they shall be appointed by the Governor as aforesaid. The Governor shall have power to fill all vacancies in said board, which occur when the Legislature is not in session and they shall hold their offices until their successors are appointed and qualified under this act. The Governor shall cause to be issued to each of said regents a commission under the seal of the Territory.

Same, organization.

(237) § **9.** At the first meeting of said board, it shall organize by the members thereof taking and subscribing an oath of office as required of all civil officers of the Territory, and shall then proceed to elect a president and treasurer, and the president shall be president of the college and shall be secretary of the board. A majority of the board shall be a quorum for the transaction of business. The board shall require a bond of its treasurer and fix the amount thereof.

Same, meetings, expenses.

(238) § **10.** The board of regents shall hold its meetings at the Agricultural College and fix the time of holding the same, providing there shall not be to exceed six regular meetings in each year. The members of the board shall receive as compensation for their services three dollars per day for each day employed, not to exceed twenty-four days in any one year and five cents per mile actually andnecessarily travelled in attending meetings of said board, which sum shall be paid out of the Territorial treasury upon the vouchers of said board.

Same, disposition of funds, buildin .

(239) § **11.** The said board of regents shall direct the disposition of all moneys appropriated by the Territorial Legislature or by Congress, or funds arising from the sale of bonds provided for in this act for the Agricultural college or experimental station for

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Oklahoma Territory, and shall have supervision or charge of the construction of all buildings provided for said college and farm. The board of regents shall have power to employ a president and necessary teachers, instructors and assistants to conduct said school and carry on the experimental farm connected therewith, and to appoint one of its members superintendent of construction of all buildings, who shall receive three dollars per day for each day actually and necessarily engaged in the discharge of his duties, not to exceed fifty days in any one year, which sum shall be paid out of the Territorial treasury upon the vouchers of said board.

Same, to audit accounts.

(240) § **12.** The said board shall audit all accounts against the funds appropriated for the use of the Agricultural College and Experimental Station, and the Territorial auditor shall issue his warrant upon the Territorial Treasurer for the amount of all accounts which shall have been audited and allowed by the board of regents and attested by the president and secretary of the same.

Course of instruction.

(241) § **13.** The design of the institution is to afford practical instruction in agriculture and the natural sciences connected therewith, and also the sciences which bear directly upon all industrial arts and pursuits. The course of instruction shall embrace the English language and literature, mathematics, civil engineering, agricultural chemistry, animal and vegetable anatomy and physiology, the veterinary art, entomology, geology and such other natural sciences as may be prescribed; political, rural, and household economy, horticulture, moral philosophy, history, bookkeeping and especially the application of science and the mechanic arts to practical agriculture in the field.

Four years course

(242) § **14.** A full course of study in the institution shall embrace not less than four years, and the college year shall consist of not less than nine calendar months, which may be divided into terms by the board of regents as in their judgment will best secure the objects for which the college was founded.

Salaries.

(243) § **15.** The board of regents shall fix the salaries of the president, teachers, instructors and other employees and prescribe their respective duties. The board may remove the president or subordinate officers and supply all vacancies.

Faculty.

(244) § **16.** The faculty shall consist of the President, teachers and instructors, and shall pass all needful rules and regulations for the government and discipline of the college, regulating the routine of labor, study, meals and the duties and exercises and all such rules and regulations as are necessary to the preservation of morals, decorum and health.

President.

(245) § **17.** The president shall be chief executive officer of the Agricultural College, and it shall be his duty to see that all rules and regulations are executed, and the subordinate officers and employees, not members of the faculty, shall be under his direction and supervision.

Pay for students labor.

(246) § **18.** The president of the college and board of regents shall constitute a committee to fix the rate of wages to be allowed

to students for labor on the farm or in the shops or kitchen of the Agricultural College.

Faculty's annual report.

(247) § **19.** The faculty shall make an annual report to the board of regents on or before the first Monday in December of each year, showing the condition of the school and farm and the results of farm experiments, and containing such recommendations as the welfare of the institution, in their opinion, demands.

Regent's report to governor.

(248) § **20.** The board of regents shall make a report to the Governor on or before the last Monday in December next preceding each biennial session of the Territorial Legislature, containing a financial statement, showing the condition of all funds appropriated for the use of the Agricultural College and experimental station, also the moneys expended and the purposes for which the same were expended in detail, also the condition of the institution and the results of all experiments carried on there.

Degrees conferred.

(249) § **21.** The board of regents and the faculty shall have power to confer degrees upon all persons who shall have completed the course of study prescribed for such school by the board and faculty, and who shall have passed a satisfactory examination upon the studies contained in said course, and who shall be known to possess a good moral character.

Experimental station.

(250) § **22.** There is hereby established an Agricultural Experimental Station in connection with the Agricultural College, by this act established, and under the direction of the board of regents, for the purpose of conducting experiments in agriculture according to the terms of the acts of Congress establishing agricultural colleges and experimental stations.

Legislature's acceptance of appropriations.

(251) § **23.** The assent of the Legislature of the Territory of Oklahoma is hereby given in pursuance of the requirements of section nine of said act of Congress, approved March 3, 1887, to the grant of money therein made, and to the establishing of an experimental station, in accordance with section one of said last mentioned act, and assent is hereby given to carry out all and singular the provisions of all the acts of Congress.

Who to receive congressional appropriations.

(252) § **24.** The board of regents hereby established, in connection with the Governor and Secretary of the Territory, shall be fully authorized to receive from the United States, any and all appropriations made for the support or maintenance of agricultural colleges within the Territory, and shall be authorized to receipt for the same and shall be chargeable therewith when received from the United States.

Who admitted as students.

(253) § **25.** Males and females shall be admitted to all the privileges of the institution hereby established, and all citizens of the Territory of Oklahoma between the ages of twelve and thirty years shall be admitted to instruction therein, if they apply as students therefor.

This act shall be in force and effect after its passage and approval.

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CHAPTER III.—ANIMALS.

AN ACT for the protection of Stock Raisers in certain localities.

[Took effect December 25, 1890.]

ARTICLE.	ARTICLE.
1. Protection to stock raisers.	4. Estrays.
2. Importation of diseased cattle.	5. Stock brands.
3. Herd law provisions	

ARTICLE 1.—PROTECTION TO STOCK RAISERS.

SECTION.	SECTION.
1. Appointment of inspector of hides and animals.	9. Uncertified stock not removable.
2. Same, oath, bond.	10 Construction of section one.
3. Special inspector of herd.	11. Fees collectible by inspector.
4. Inspector to seize certain cattle.	12. Inspector, when notified by owner.
5 Calves and yearlings, when seized.	13 Same, fine for failure to notify.
6 Unbranded animals and hides seized	14. Incoming stockholders to notify inspector; one mile per day limit.
7. Writ of sequestration.	15. Same, fine for failure to notify.
8. Inspector's report to court; citation issued; inspector's sale.	

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Inspector of hides and animals.

(254) § **1.** In sparsely settled counties, and in counties where grazing is the principal business, and Beaver county is hereby designated as one of such counties, there shall be appointed by the Governor an Inspector of hides and animals, who shall hold his office for the term of three years, whose duty it shall be to inspect in person, or by deputy, all hides or animals known or reported to him as leaving or going out of the county, for sale or shipment, and all animals driven or sold in his county for slaughter or grazing. The inspector shall keep a record in a well bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are green or dry, and the name or names of the vendor or vendors and the purchaser or purchasers thereof.

Same, oath, bond.

(255) § **2.** Every person appointed to the office of inspector of hides and animals before entering upon the duties of his office shall enter into a bond, with two or more good and sufficient sureties, to be approved by the county commissioners, which bond shall be in a sum fixed by said commissioners, not less than one thousand dollars nor more than ten thousand dollars, payable to the county probate judge, conditioned that he shall well and truly perform the duties of his office, in accordance with the provisions of this act, and he shall also take and subscribe to the oath of office, prescribed by law, which shall be endorsed on or attached to said bond, together with the certificate of the officer administering the same, which bond and oath shall be deposited and recorded in the office of the county clerk. The bond herein pro-

vided shall not be void for want of form or on the first recovery, but may be sued on from time to time in the name of any person injured by breach thereof, until the whole penalty shall have been recovered.

Special inspection of herd.

(256) § **3.** Whenever any person shall be about to drive or ship any stock out of this Territory, if the inspector shall believe or is informed by any creditable person that said person has other stock in his herd than those covered by his original certificate of inspection, or by subsequent purchases, duly attested by a proper bill of sale, the inspector at said point of shipment, or border county where said person leaves the Territory, shall be authorized to inspect said stock in the same manner as in the original inspection, and if any stock is found in said herd, other than those covered by his original certificate of inspection or by subsequent purchase duly and properly authenticated by a bill of sale, the fees of said inspection shall be paid as provided in section eleven of this act; *Provided*, That the said inspector shall in no case be authorized to receive or demand more than three cents per head for each head of cattle inspected that may be leaving the Territory; but if not, then said fees shall be paid by the person at whose instance said inspection is made; and if said inspection is made by the inspector at his own instance and no stock is found in said herd except those properly accounted for under the provisions of this act, then said inspector shall receive no fees for said inspection.

Inspector to seize cattle.

(257) § **4.** But if the inspector shall find that the point of destination upon inspection that the owner of the herd or person in charge has in his herd other cattle besides those inspected originally in the county from which said herd was driven, he shall seize said cattle and take them into possession.

Calves and yearlings, when seized

(258) § **5.** Every inspector shall have power to and may seize and sequestrate all unmarked or unbranded calves or yearlings and all calves or yearlings freshly marked or branded, and on which the fresh marks or brands are unhealed which are about to be slaughtered or driven or shipped out of the county unless such animals are accompanied by the mothers thereof or are identified by the presentation of a bill of sale from the person proved to be the owner thereof, signed by him or his legally authorized agent and acknowledged before some officer authorized to authenticate instruments for record in this Territory.

Unbranded animals and hides seized.

(259) § **6.** Every inspector shall have power to and may seize and sequestrate all unbranded animals or hides, and animals or hides upon which the mark or brand cannot be ascertained, which are about to be taken or shipped out of the county, or which animals are about to be slaughtered, unless such animals or hides are identified as provided in the preceding article.

Writ of sequestration.

(260) § **7.** If the person in charge of any such cattle shall refuse to deliver the same into the possession of the inspector, such inspector may apply for and obtain a writ of sequestration from any justice of the peace, probate judge or district Judge, according as the value of such cattle may come within the jurisdiction of either. Such writ may be obtained upon the affidavit

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of the inspector stating that he believed such cattle have been unlawfully acquired; and shall issue without bond and be forthwith executed by the sheriff or any constable of the county.

Inspector's report to court, citation issued; inspector's sale

(261.) § **8.** When the inspector has seized any hides or animals as provided for in the preceding sections, he shall report the fact to some judge of the district or probate court, or justice of the peace, according as the value of the property seized may come within the jurisdiction of either of said courts, and it shall be the duty of said judge or justice to issue or cause to be issued a citation addressed to all whom it may concern, setting forth the seizure of said property, with a description of the same, commanding them to appear at a day named in said citation, to show cause why the said property should not be forfeited to the county wherein the same was seized, and sold for the benefit of said county. Said citation shall be directed to the sheriff or any constable of said county who shall cause certified copies of the same to be posted in three public places in said county for a period of ten days before the day mentioned in said citation. Upon the proof of the posting of said citation, as herein required, it shall be the duty of the judge or justice issuing said citation to proceed to condemn the property mentioned in said citation unless satisfactory proof should be made of the ownership of said property or other sufficient cause to be shown why the same should not be condemed; and in case of condemnation, he shall order the same to be sold by the inspector at public auction to the highest bidder. The inspector shall be entitled to retain one fourth of the net proceeds of such sale after deducting therefrom all expenses connected therewith, and he shall immediately pay the remaining three-fourths thereof into the county treasury. And all sums so paid in shall be placed to the credit of the general fund of such county.

Uncertified stock not removable

(262) § **9.** No inspector shall grant any certificate of inspection of any unbranded hides or animals or of hides or animals upon which the marks or brand cannot be ascertained, and he shall prevent the same being taken or shipped out of the county unless they are identified by proof or by bill of sale signed by the owner of such hides or animals, and acknowledged before some officer authorized to authenticate instruments for record in this Territory.

Construction of section one

(263) § **10.** Section one shall be so construed as to mean cattle, horses, mules and sheep, and to apply to all of the same which may be driven into or passing through the county, either for grazing or for any purpose whatsoever.

Fees collected by inspector.

(264) § **11.** The inspector shall collect as fees from the owner, vendor or person in charge, not more than three cents for each and every head of horses, mules, or cattle leaving the county, and not less than two cents for each head of sheep. And for each and every head of horses, mules, sheep or cattle, which may enter the county, he shall collect as fees not more than five cents per head, and for each and every hide inspected he shall collect as fees not more than five cents.

Inspector, when notified by owner

(265) § **12.** All owners or persons in charge of any cattle,

horses, mules or sheep which are about to enter or about to leave the county, shall notify the inspector of said county of their intention.

Same, fine for failure to notify.

(266) § **13.** And in case said owners or persons in charge shall fail to notify the inspector of hides and animals of any county, according to the provisions of the foregoing section, they shall be punished by a fine not less than five hundred nor more than one thousand dollars.

Incoming stock holders to notify inspector.

(267) § **14.** All owners or persons in charge of any cattle, horses, mules or sheep shall immediately upon their entrance into the county, notify the inspector of hides and animals of said county of that fact ; and until such cattle, horses, mules or sheep have been inspected by the county inspector of hides and animals, they shall not move more than one mile per day.

Same, fine for failure to notify.

(268) § **15.** And in case any owner, or owners, or person in charge of any horses, cattle, sheep or mules shall fail to notify the inspector of hides and animals of any county of their entrance into said county, or shall after entrance into said county move more than one mile per day, they shall be fined not less than two hundred nor more than five hundred dollars.

This act shall be in force from and after its passage and approval.

ARTICLE 2.—IMPORTATION OF DISEASED CATTLE.

AN ACT to prevent the importation of diseased cattle or cattle coming from infected districts.

[Took effect December 25, 1890.]

SECTION.

1. District embraced in this act's prohibitions.
2. Governor to proclaim quarantine, when.
3 What acts prohibited by owners of cattle capable of importing Spanish fever.
4 Railways prohibited from unloading certain stock.

SECTION.

5. Owners to hold certificate for cattle brought in to graze.
6 Officer's fees.
7. Cattle seized by sheriff, publication; damages
8. Cattle held for damages.
9. Violation of this act.
10 New territory included.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

District embraced

(269) § **1.** The importation of cattle into the Territory of Oklahoma is strictly prohibited when coming from all of that country lying south and east of the line commencing on the Mississippi river at latitude, thirty-six degrees, thirty minutes north, thence running westward on that parallel of latitude being the southern boundary of Missouri, to the eastern boundary of Indian Territory, thence running south along the eastern boundary of Indian Territory to the South Canadian River, thence westward along the South Canadian River and the northern boundary of the Choctaw and Chickasaw Nations to the northwest corner of the Chickasaw Nation, thence along the west boundary of the Chickasaw Nation to the southern boundary of the Indian Territory, and along Red River to the one hundredth meridian of longitude, thence westward along the southern boundary of the counties of Childress,

Chap. 3. Hall, Briscoe, Swisher, Castro and Palmer in Texas, to the Eastern boundary of New Mexico, thence north along the eastern boundary of New Mexico to the northeast corner of New Mexico, thence westward along the northern boundary of New Mexico to Arizona, from the fifteenth day of March to the first day of November of any year.

Quarantine proclaimed.

(270) § **2.** It shall be the duty of the Governor of the Territory, upon reliable information that any cattle having any contagious or infectious disease in any district, locality, State or Territory, not restricted by this act, or if it shall become known to him that the cattle in one portion of this Territory will, by driving or transportation to any other portion of the Territory, impart any contagious or infectious disease to other cattle, to immediately proclaim a quarantine against the said cattle, establishing boundary lines until he is fully satisfied that such contagious or infectious diseases do exist.

Acts prohibited

(271) § **3.** No person or persons shall drive or cause to be driven into or through any county or part thereof, or turn upon, into, or through any county or part thereof, or turn upon, or cause to be turned upon, or kept upon any highway, range or pastures, within this Territory any cattle coming from the territory south and east of the boundary above described, or any line made by the Governor by proclamation, or any cattle capable of communicating or liable to impart what is known as Texas splenic or Spanish fever.

Railways not to unload.

(272) § **4.** All railroads and transportation companies transporting cattle from any point south and east of the line herein established or hereafter made by the Governor, to points beyond the Territory boundaries are prohibited from unloading such cattle at any point in this Territory unless special pens are made for the care of such cattle and are kept especially for such use, and no cattle shall be driven into or from such pens that are located in this Territory during the time herein specified.

Imported grazing cattle, certificate, commissioners jurisdiction.

(273) § **5.** Any person or persons driving or transporting cattle into the Territory for the purpose of grazing or feeding during the time above specified, shall first satisfy the county clerk of the county at the point of entrance, by the affidavits of at least two responsible persons, that said cattle have not been south or east of the line herein described or hereafter made by the Governor for at least ninety days preceding the entry, and receive a certificate with his official seal stating that the said cattle are permitted to enter the Territory, describing the cattle by brand or some other mark of identity, and upon complaint of any citizen of this Territory that any cattle that a certificate had been given for, such complaint be made by affidavit, that said cattle are not entitled to enter the Territory by the provisions of this act, the sheriff of the county shall prohibit the entering of such cattle and the county commissioners of the county at the point of entry shall have jurisdiction to decide the point in question.

Officer's fees.

(274) § **6.** All officers carrying out the provisions oi this act, shall receive the same fees as allowed in other cases where affida-

vits, certificates and other similar duties are performed, to be paid by the owners or persons in charge of the cattle.

Cattle seized by sheriff, publication, damages.

(275) § **7.** All cattle entering the Territory in violation of this act, shall be seized by the sheriff of the county in which they are discovered and placed in an inclosure for at least ninety days, or until they are released by the board of county commissioners, and provided the costs and expenses incurred in carrying out the provisions of this act and all damages by any person sustained are not immediately paid by the owners or persons in charge of the cattle, they shall be sold at public auction, notices to be posted in at least three places, one of which must be upon the court house door in the county that the cattle are to be sold, also a notice to be published in one of the newspapers published in the county, or in case none are printed in the county, then in the nearest county having a paper at least ten days before the day of sale.

Cattle held for damages.

(276) § **8.** Any person or persons driving cattle into this Territory in violation of this act, shall be liable, in addition to the penalties prescribed, for all damages done by said cattle, and said person or persons and cattle shall be held until all such damages are fully satisfied by sale as above provided for.

Violation of this act.

(277) § **9.** Any person or persons, officer or officers violating any of the provisions of this act, shall upon conviction thereof, be adjudged guilty of a misdemeanor and shall for each offense be fined not less than three hundred dollars nor more than one thousand dollars or imprisonment in the county jail for not less than fifteen [days] nor more than one year, or both at the discretion of the court.

New territory included.

(278) **10.** All counties, districts or territory of any kind, hereafter becoming attached to the Territory of Oklahoma, shall be subject to all the provisions of this act.

This act shll be in force upon its passage and approval.

ARTICLE 3 —HERD LAW PROVISIONS

AN ACT to regulate and restrain the running at large of domestic animals and to provide for fencing against them.

[Took effect December 25, 1890.]

Section.
1. Animals listed.
2. Free range petitioned for
3. Free range election, form
4. When law first operative.
5. Stock distrained, owner liable.
6 Illegal removal from restraint.
7. The word "owner."
8. Distraint, notice, cost, sale, damages.
9 Assessment filed, appeal.
10. Who authorized to restrain.
11. Civil action; who considered owner
12 Partition fences, periodical restraint law.
13 The same, work on, recovery.
14. The same, disagreement.
15 The same, viewer's assignment.
16 The same, repair.

Section.
17. Land used as commons.
18. Common enclosure, severalty demanded.
19. The same, notice given
20. Old partition fence paid for.
21. County clerk's record binds heirs
22. "Owner" to mean tenant.
23. Fence misplaced, how removed
24. Conditions of removing improvements.
25. Viewer's further powers
26. Fence placed on line.
27. This act, when no bar.
28. Legal fence.
29 Viewers, how chosen, etc , fence broken.
30 Trespassing stock, when sold.
31. Beaver county exempt.

Chap. 3. *Be it enacted by the Legislative Assembly of the Territory of Oklahoma:*

Animals listed.

(279.) § **1.** Every owner of swine, sheep, goats, stallions and jacks, shall restrain them from running at large at all seasons of the year. All other stock shall be so restrained unless permitted to run at large as hereafter provided in this act.

Free range petitioned for.

(280) § **2.** The county commissioners shall, on a petition presented, signed by twenty-five free-holders, residents of the township, or district, divide their counties into districts for the purpose of determining the question as to whether or not stock other than swine, sheep, goats, stallions and jacks, shall be permitted to run at large, and in making such division, shall consider the condition of the land, its streams, whether watered or timbered or prairie, and as to whether or not it is best adapted to agriculture or stock raising: *Provided, however*, That no district shall contain an area aggregating less than seventy-two square miles, but may contain as many as four such townships.

Free range election, forms.

(281) § **3.** After the districts are so formed, it shall be lawful for residents of any district to petition the board of county commissioners of their respective counties, asking that there shall be submitted to the legal voters within that district the question as to whether or not stock shall be restrained from running at large; if the petition be signed by one-fourth of the legal voters in any district, it shall be the duty of the county commissioners to submit to the electors of such district at the next general election, or if the board deem it advisable, at a special election called for that purpose, the following questions of police regulations, or any one or all of them, to-wit: Shall stock be restrained from running at large? Shall stock be restrained from running at large from between sun-set and sunrise? Shall stock be restrained from running at large from the first day of.....until the first day of.....? Shall stock be restrained from running at large between sunset and sunrise from the first day of.....until the first day of.....?

When law first operative.

(282) § **4.** If at such election a majority of the electors residents of the district so formed, shall vote in favor of either one of such regulations, then the same shall take effect and be in force within the district at the end of thirty days after the election so held, and shall continue in force until an election is called for a resubmission of the same question, and if a majority of the electors of the same district voting thereon, shall vote against such regulation at the resubmission, then the regulation shall cease to be effective at the end of ninety days thereafter.

Stock distrained, owner liable

(283) **5.** The owner of any stock or domestic animal prohibited by law from running at large, or prohibited by police regulation of any such district from running at large within the district at any of the times adopted by said vote, shall be liable for all damages done thereby while wrongfully remaining at large upon the public highway or upon the lands of another; which may be recovered by action of law, or the party injured may, at his option, distrain the trespassing animals and retain the same in some safe place at the expense of the owner until damages are paid, as

provided in this act. Said damages to be assessed "*pro rata*" per head, and each owner, if more than one owner, shall be liable for the "*pro rata*" amount, and each owner shall have the right to discharge his stock from distrain by paying the said "*pro rata*" amount to the person damaged, together with his "*pro rata*" share of the costs of such distraint; *Provided, however*, That no stock or domestic animal prohibited from running at large by virtue of such police regulation shall be considered as running at large so long as the same is upon unimproved and uncultivated lands of the owner of said stock, and under the immediate care and control of the owner, or upon the public highway; but if permitted while under such care and control to stray upon the lands of another, they shall be held to be at large.

Illegal removal from distraint.

(284) § **6.** If any person, by force or otherwise, without leave of the person having the stock under distraint, remove the stock from such distraint, he shall be guilty of a misdemeanor and shall pay a fine of not less than ten nor more than one hundred dollars, or be imprisoned in the county jail not less than ten nor more than thirty days, and shall in addition thereto, be liable in a civil action for the recovery of the stock so relieved from restraint, or damages and costs, as the party distraining may elect.

The word "owner."

(285) § **7.** The word "owner" as used in this act, shall include the person entitled to the immediate possession of the animal, and also the person having care or charge of the same, and also the person having the legal title thereto.

Distraint, notice, cost, sale, damages.

(286) § **8.** Within twenty-four hours after the stock has been restrained, Sunday not being included, the party so injured, or his agent, shall notify the owner of said stock, when known, and if unknown, the party having them in charge, and if said owner shall fail to satisfy the person whose lands are trespassed upon, he shall within twenty-four hours thereafter, notify some disinterested justice of the peace to be and appear upon the premises to view and assess the damages; such notice to be written. The justice shall proceed to view and assess the damages, and a reasonable amount to be paid for seizing and keeping said stock, and if the person or persons owning such distrained stock, refuse to pay such damages as assessed, the justice shall post up in three conspicuous places in the township where such damages were done, notices that the said stock, or as much thereof as are necessary to pay said damages with costs of sale, will be sold to the highest bidder; any money or stock left after satisfying such claims shall be returned to the owner of the stock disposed of; said sale shall take place at the enclosure where said stock was distrained, between the hours of one and three P. M. on the tenth day after posting of such notices, Sundays excepted. The owner of the stock or the person entitled to the possession thereof, when known, shall also be notified of the time and place when the justice or said trustees will proceed to assess said damages.

Assessment filed, appeal.

(287) § **9.** The justice shall make an assessment in writing and file the same with the county clerk, to be kept in his office. Any person aggrieved by the action of the justice under this act, may appeal therefrom, as from a judgement of the justice of the peace,

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The person appealing shall file with the justice of the peace a bond in a penalty double the value of the property distrained, or if the value of the property exceed the amount of damage claimed, then in double the amount of the damages. Notice of such appeal shall be given in the same time and manner as in appeals from the justice of the peace, with good and sufficient sureties, to be approved by the justice and from and after the filing of the appeal bond, the same shall operate as a supercedeas. In case the owner of such stock be appellant, the same shall be delivered to him. The justice of the peace shall, after the appeal is taken, certify all the original papers in the case to the court to which the appeal is taken in the same manner and within the same time as taking appeals from a judgement of a justice of the peace.

Who authorized to restra n.

(288) § **10.** Any person a resident of the county, may take up any jack, boar, buck, or male goat found at large in the county, and when so taken up the animal shall be treated in all respects as in this act provided in regard to stock trespassing.

Civil action, who consider ed owner.

(289) § **11.** Persons injured by animals tresspassing upon their lands may pursue the remedies provided in this act, or may maintain civil action before any court of competent jurisdiction to recover the amount of damages so claimed. The persons or owners of stock prohibited from running at large by this act, shall be liable for all damages done by such animals upon the land of another, and the owner of the land so trespassed upon, may restrain such stock as in this act provided, or may recover damages by civil action. For the purposes of this act, the owner, homesteader, tenant or other person in possession of, or cultivating the land trespassed upon, shall be deemed to be the owner thereof.

Partition fences. periodical retraint law.

(290) § **12.** In districts where stock is not restrained from running at large, or where it is permitted to run at large from sunrise to sundown, or is permitted to run at large during certain months in the year, the respective owners of land lying in such district and enclosed with fences shall keep up and maintain partition fences between their own and the next adjoining enclosure, so long as they improve them in equal shares, unless otherwise agreed in writing between them.

The same, work on, recovery.

(291) § **13.** If such fence be not repaired or built accordingly, the complainant may repair or rebuild it, and the same adjudged sufficient by the fence viewers and the value thereof, with their fees, being ascertained by them and certified under their hands, the complainant may demand of the owner of the land where the fence was deficient, the sum so ascertained and in case of neglect to pay the same for one month after demand, may recover it by civil action, together with one per cent a month interest thereon.

The same, disagreement

(292) § **14.** When a controversy arises between the respective owners about the obligation to erect or maintain partition fences, either party may apply to the fence viewers, who, after due notice to each party, may inquire into the matter and assign to each his share thereof, and direct the time in which each shall erect or repair his share in the manner provided above.

The same, viewer's assignment.

(293) § **15.** If any party neglect to erect or maintain the part

of fence assigned him by the fence viewers, it may be erected and maintained by the aggrieved party in the manner before provided, and he shall be entitled to double the value thereof, to be recovered as hereinafter provided.

The same, repair.

(294) § **16.** All partition fences shall be kept in good repair throughout the year, unless the owners on both sides otherwise agree in writing.

Land used as commons

(295) § **17.** Any person not wishing his land enclosed and not occupying or using it otherwise than as a commons, shall not be compelled to contribute to erect or maintain any fence between him and an adjacent owner; but when he encloses or uses his land otherwise than as a commons, he shall contribute to the partition fences as in this act provided.

Common enclosure, severalty demanded.

(296) § **18.** When lands owned in severalty have been enclosed in common without a partition fence, and one of the owners is desirous of occupying his in severalty and the other refuses or neglects to divide the line where the fence shall be built, or refuses to build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by the fence viewers, who may, in writing, assign a reasonable time within six months, having regard for the season of the year for making the fence, and if either party neglects to comply with the decision of the viewers, the other, after making his own part, may make the other part and recover as hereinbefore provided.

The same, notice given

(297) § **19.** In the case mentioned in the preceding section, when one of the owners desires to throw open any portion of his field not less than twenty feet in width and leave it unenclosed to be used as commons by the public, he shall first give the other party six months notice thereof.

Old partition fence paid for

(298) § **20.** When land which has laid unenclosed is enclosed, the owner thereof, before he join to any partition fence already erected, shall pay for one half of each partition fence between his lands and the adjoining lands the value to be ascertained by the fence viewers, and if he neglect for thirty days after notice and demand to pay the same, the other party may recover as before provided, or he may at his election rebuild and make half of the fence, and if he neglects so to do for two months after making such election, he shall be liable as above provided.

County clerk's record binds heirs,

(299) § **21.** When a division of fence between the owners of improved lands may have been made, either by fence viewers or by agreement in writing, recorded in the office of the county clerk of the county where the lands are, the owners and their heirs and assigns shall be bound thereby, and shall support them accordingly.

"Owner" to mean tenant.

(300) § **22.** In the provisions of this act the term "owner" shall apply to the occupant or tenant when the owner does not reside in the county, but these proceedings will not bind the owner unless notified.

Fence misplaced, how removed.

(301) § **23.** When a person has made a fence or other improvement on an enclosure, which, on afterward making division lines, is found to be on land of another, and the same has occurred through mistake, such person may enter upon the land of the oth-

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er and remove his fence or other improvement and material within six months after such has been run, upon his first paying or offering to pay, the other party for any damage to the soil which may be occasioned thereby, and when the parties cannot agree as to the damages, the fence viewers may determine the amount as in other cases.

Conditions of removing improvements

(302) § **24.** But such fence or other improvement, except substantial building, shall not be removed if they were made or taken from the land on which they lie, until the party pays the owner the value of the timber, to be ascertained by fence viewers, nor shall a fence be removed at a time when the removal will throw open or expose the crop of the other party, but it shall be removed in a reasonable time after the crop is secured, although the above six months have passed.

Viewer's further powers.

(303) § **25.** When any question arises between parties other than those above stated, concerning their rights in fences or their duties in relation in building, or maintaining or removing them, such question may be determined by the fence viewers as in this act provided.

Fence placed on line

(304) § **26.** A person building a fence may erect the same upon the line between him and the adjacent owners, so that the fence may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on his own land.

This act, when no bar.

(305) § **27.** The foregoing provisions of this act shall not bar any other legal proceedings for the determination of the title of land, or the dividing line between contending owners, nor do they preclude agreement by the parties.

Legal fence

(306) § **28.** A fence made of three rails of good substantial material, or three boards not less than six inches wide and three quarters of an inch thick, such rails or boards to be fastened in or to good substantial posts, not more than ten feet apart, where rails are used, and not more than eight feet apart where boards are used, where either wholly or in part, substantially built and kept in good repair, or any other kind of fence, which, in the opinion of the fence viewers, shall be equivalent thereto, shall be a declared lawful fence: *Provided*, That the lowest or bottom rail, wire or board, shall not be more than twenty or less than sixteen inches from the ground, and that such fence shall be fifty-four inches in height, except that a barb wire fence may consist of three barb wires, or four wires, two of which shall be barbed, the wires to be firmly fastened to the posts not more than two rods apart, with two stays between the posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four, nor less than fifty-eight inches in height, and the bottom wire not more than twenty nor less than sixteen inches from the ground: *Provided further*, That all partition fences may be made tight at the expense of the party desiring it, and such party may take from such fence the same material by him added thereto whenever he may elect: *And provided further*, That when the owner or occupants of adjoining lands both use the fence for the purpose of restraining swine, goats or sheep, each of said owners or occupants

shall keep their respective share of the partition fence sufficiently tight to restrain such sheep or swine. Chap. 3.

Viewers, how chosen; fence broken.

(307) § **29.** Fence viewers herein designated shall consist of three disinterested freeholders, one to be chosen by each of the interested parties, and the two so chosen shall choose the third person and the three so chosen shall proceed to discharge the duties of fence viewers as herein provided. Such fence viewers to be allowed one dollar a day each, to be paid by the interested parties. In districts where fences are required, as in this act provided, the owner of stock shall be liable for all damage done by animals breaking through or over lawful fences and trespassing upon the enclosed lands of another, and the animals so breaking through or over such fence may be seized as trespassing animals and proceeded with as provided in this act, may be done in districts where stock is restrained from running at large, or the party may maintain his action to recover the damages as in this act provided.

Trespassing stock, when sold.

(308) § **30.** In all cases where the plaintiff may recover judgment for damages caused by the trespassing animals of another, the judgment shall be a lien upon the stock so trespassing, and the plaintiff may have special execution for the sale of such stock to satisfy the judgment and costs or general execution as he may elect.

Beaver county exempt.

(309) § **31.** It is hereby declared that the provisions of this act in regard to restraining stock, shall not apply to the county now known as Beaver county, and the same is hereby declared a free range county: *Provided, however,* That the people of such county may by petition as hereinbefore provided for free range, have the privilege of voting on the restraining of stock.

(310) This act shall be in force from and after the adjournment of the present session of this Legislative Assembly.

ARTICLE 4.—ESTRAYS.

SECTION.		SECTION.	
1.	Estrays, taken up.	14.	Unlawful sale; fine and imprisonment.
2.	Days necessary to hold estrays, others to take up.	15	Unlawful handling of estray; fine.
3.	Time to advertise and how.	16	County commissioner's duties.
4.	Affidavit by taker-up before justice.	17.	Justice's duties.
5.	Who to take up an estray; bond, before whom and amount.	18.	Affidavit of citizens on estrays; this act violated; justice's summons.
6.	Justice to furnish county clerk a copy of record.	19	Jury trial before justice
7.	County clerk's record; publication of taker-up, manner based on valuation.	20.	Judgment; delivery of estray.
8	Use of estray by holder	21.	Disposition of fines.
9.	Owner's power of recovery; valuation and time; liens cancelled.	22.	Compensation paid taker-up by owner.
10.	Justice trial of taker-up's expense.	23.	County clerk's fees.
11.	Summons to appraisers.	24.	Justice's fees.
12.	Appraisement; title.	25.	Escape of estray.
13.	Taker-up to pay county estray's one-half value for the school fund.	26.	County clerk, or justice fined.

AN ACT to provide for taking up domestic animals as estrays.

[Took effect December 18, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

Estray, taken up.

(311) § **1.** It shall be lawful for any homesteader or land

owner in the Territory, to take up any estray horse, mule, ass, neat cattle, sheep or swine found on his premises at any season of the year.

Days necessary to hold.

(312 § **2.** If any animal liable to be taken up shall come upon the premises of any homesteader or land owner, and the owner of such premises fail to keep up such estray for more than five days after being notified of the fact, any other homesteader or land owner of the same county may take up such estray and proceed with it as if taken up on his own premises.

Time to advertise

(313) § **3.** If any homesteader or land owner take up any estray, he shall within three days thereafter, advertise the same by posting up three printed or written notices in as many public places in the township or district, which notice shall contain a full description of the estray.

Taker up's affidavit.

(314) § **4.** If such estray shall not be claimed and proved at the expiration of ten days after it was taken up and advertised, then the taker-up shall go before a justice of the peace of the township or district, and file his affidavit, stating that such estray was taken up on his premises, and that he did not drive or cause it to be driven there; or that it was taken up on the premises of some other person, naming him, and that he gave such person five days notice, and that he has advertised such estray ten days, and the marks or brands have not been altered since to his knowledge, and giving a true and correct description, giving age, sex, color, marks and brands, and cash value of such estray at the time the same was taken up.

Who to take up, bond

(315) § **5.** No person shall take up any horse, mule, ass, bull, sheep, ox, swine or other animal under the provisions of this act, unless he be a homesteader or land owner as in section (1) one described, and he shall at the time he appears before the justice to post such estray, enter into a bond with sufficient sureties to the Territory of Oklahoma, for the use of the owner, in double the value of the property proposed to be taken up, to be ascertained by the justice before whom the person wishes to post such estray, which bond shall be filed and preserved by such justice.

Justice report to clerk

(316) § **6.** The justice of the peace shall, within twenty days from the time such estray was taked up, make out and deliver to the county clerk a certified copy of the description and value of such estray.

Duties of county clerk.

(317) § **7.** The clerk immediately after receiving the certified copy from the justice, shall record the same in a book kept for that purpose; and whenever the value of such estray or estrays shall exceed ten dollars as shown in such description thereof, said county clerk shall within ten days after receiving such certified description, unless the animal shall have been previously reclaimed by the owner, cause to be published in some newspaper, published in the county and of general circulation throughout the county, the notice of the taking up of such estray, which notice shall contain a complete description of such estray, the day on which it was taken up, its value and the name and residence of the taker-up, which notice shall be inserted in three consecutive

weekly issues of said paper, for which the publisher thereof shall receive one dollar for each notice containing a description of one animal, and twenty-five cents for each additional animal: *Provided*, The above notice for publication shall not be required in the case of swine and sheep. And any property so taken up, the value of which shall be appraised at less than ten dollars, the taker-up shall only advertise the same by posting up three written descriptive notices of such property in as many public places in the township.

Use of estray.

(318.) § **8**. Any person may use an estray, lawfully taken up by him, with care and moderation, if he do not injure or abuse it; but if said animal is damaged through his wilful negligence, then he is liable for the same.

Owner's power of recovery.

(319.) § **9**. The owner of any estray swine, sheep or other stock of the value of ten dollars or less per head, may within two months and the owner of any other kind of stock of the value of from ten to twenty-five dollars, may within six months, and the owners of other stock of the value of twenty-five dollars or more per head, may within twelve months, from the time of taking up, prove the same before the justice of the peace who has custody of the book in which the description of said property is recorded; having first given three days notice to the taker-up in writing of the time and place, when and where such proof will be offered, and if the justice is satisfied from the evidence that the estray belongs to the claimant, he shall upon payment by the claimant of all costs and expenses of keeping, order it to be delivered to the owner; and the justice shall certify to the county clerk within thirty days that such estray has been proved and returned to the proper owner, and the clerk shall make an entry of the fact stated in such certificate in the margin of the county record where such estray is recorded, in his office, which entry shall cancel all liens for the costs that the county may have upon such estray.

Justice trial of taker up's expense

(320.) § **10**. If the owner and taker-up cannot agree as to the amount of costs and expense of taking up and keeping, it shall be decided on application of either party by the justice of the peace before whom the proof of ownership was made, who may compel the attendance of witnesses if necessary, as in other cases; and in making up his decision he shall take into consideration whatever service the taker-up may have had of such estray.

Summons to appraisement.

(321) § **11.** After the end of twelve months after any estray of the value of twenty-five dollars or more was taken up, if such estray has not been reclaimed by the owner, the justice of the peace in the township or district where said estray was taken up, or the justice who has custody of such estray book, shall issue a summons to three disinterested house-holders to appear and appraise such estray, which summons shall forthwith be certified by the taker-up of such estray; which service shall be without charge if not demanded at the time of making the appraisement

Appraisement, title.

(322) § **12.** The house-holders, or two of them, shall proceed to describe and appraise such estray, stating the age, size, color, sex, marks and brands, and appraise the same; which description and appraisement they shall reduce to writing, to which they shall

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append their affidavits that the same is a true description and a fair and impartial appraisement, which shallbe filed by the justice and recorded by him in a book kept for that purpose. Said appraisers shall also take into consideration the cost of keeping such estray for the period of twelve months previous to their appraisement, and also consider any benefit the taker-up may have derived from the use of such estray, and shall report their allowance for same on the appraisement list: *Provided*, That the title to all stock taken up and appraised at not less than twenty-five dollars shall vest in the taker-up of such stock, if not proven within the time provided in this act by paying all costs.

Taker-up to pay county.

(323) § **13.** In all cases where the title to any estray valued at twenty-five dollars or more shall vest in the taker-up by the lapse of time, the taker-up shall pay into the county treasury, after deducting all costs of taking up, posting and taking care, one-half of the remainder of the value of the appraised estray to the use of the county school fund; and in default of such payment, the county shall hold a lien on such estray in addition to the security of the bond provided for in this act to secure the payment of such moiety to the county.

Unlawful sale, punishment,

(324) § **14.** If any person shall sell or dispose of any estray, or take the same out of this Territory before the title shall have vested in him, he or his bondsmen shall pay to the county double the value of such estray and he shall be punished by fine not exceeding twenty dollars and imprisonment in the county jail not exceeding thirty days.

Unlawful dealing; punishment

(325) § **15.** Any person who shall unlawfully take up any estray, and fail to comply with the provisions of this act, or work or use such estray before advertising the same, or shall drive the same on his premises for the purpose of taking up the same, or shall keep the same out of the county more than five days at one time, before he acquires a title to it, shall forfeit to the county a sum not exceeding fifty dollars.

County commissioner's duties.

(326) § **16.** The county commissioners of the several counties of the Territory, at some regular session of their respective boards, in each year, shall examine the certificates or other records of estrays filed in the office of the county clerk of their respective counties, and if, upon examination, they shall find by lapse of time, that such estrays shall have become the property of the taker-up, the board shall issue their warrant under the seal of the county, directed to the sheriff, commanding him to collect the amount due the county, according to the provisions of this act; and such estray shall, in all cases, be subjected to a lien held by the county, as provided in this act, and the county commissioners may order the sheriff to seize and sell the same, or they may order the county attorney to bring suit therefor against the taker-up and his bondsmen for the amount due the county.

Justice's duties

(327) § **17.** Justices of the peace in their respective counties, shall have jurisdiction and take cognizance of all actions for the violation of this act, and enforce all the penalties and fines against persons who may be guilty of such violations; and it shall be the

duty of any county officer who knows of a violation of this act to report the same to the nearest justice of the peace of the county.

This act violated; Justice's summons

(328) § **18.** Upon the affidavit of any citizen of the county wherein such estrays may be held or so taken up being filed with any justice of the peace of the county, setting forth that any person, naming him, has disposed of any estray, or in any manner violated the provisions of this act, and describing the estray in full, said justice shall issue his summons and writ, as is provided in civil cases, commanding the officer to take the estray into his possession and summons the person who may have violated this act, and also the person having possession of the animal seized, to appear and answer as is provided in cases of replevin.

Jury trial before justice.

(329) § **19.** All trials before a justice of the peace, under this act, if demanded by the defendant, shall be by a jury of six competent men, to be collected as in civil cases, who shall if they find the defendant guilty, assess the fine to be paid by him, or the imprisonment to be inflicted, subject to an appeal, as in civil cases.

Judgment, delivery of estray.

(330) § **20.** If upon examination and hearing, it shall appear to the justice that this act has been violated, he shall assess the fine as herein provided, and shall order the officer to deliver the estray to any person who will give good and sufficient bond to the county to keep such estray until the expiration of the time of reclaiming the same herein provided for, at which time the title shall vest in him, as it would have done in the taker-up; and he shall be subject to the same liabilities and requirements as the taker-up.

Disposition of fines.

(331) § **21.** All fines collected under the provisions of this act, shall be paid into the county treasury for the use of the county school fund.

Compensation paid by owner.

(332) § **22.** There shall be allowed for taking up estrays the following compensation, to be paid by the owner thereof: For taking up every horse, mule or ass, fifty cents; for every head of neat cattle, twenty-five cents; for all other kinds of cattle, fifteen cents per head, and all costs and expenses as provided in this act.

County clerk's fees.

(333) § **23.** The county clerk shall receive for recording each certificate of estrays and furnishing a description of the same for publication, as heretofore provided, thirty-five cents, whether such certificate contain a greater or less number of estrays.

Justice's fees.

(334) § **24.** The justice of the peace shall receive the sum of thirty-five cents for making out and recording each certificate of appraisement, including the oath administered to the appraisers, whether such certificate contain a greater or less number of animals, and forty cents for each certified copy of the proceedings pertaining to such estray or estrays: *Provided*, That the fees charged by such justice of the peace in any one case shall not be greater than one dollar and fifty cents. The appraisers shall be allowed for their services each fifty cents, and in no case shall they receive mileage.

Escape of estray.

(335) § **25.** If an estray lawfully taken up get away or die, without fault of the taker-up, he shall not be liable for the same.

County clerk or justice fined.

(336) § **26.** If any county clerk or justice of the peace fail to

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perform the duties enjoined upon him by this act, he shall forfeit and pay to the county not less than five and not more than fifty dollars, and pay to the party injured not less than five and not more than one hundred dollars.

(337) This act shall take effect and be in force from and after the date of its passage and approval.

ARTICLE 5.—STOCK BRANDS.

AN ACT to provide for the registration of stock brands or marks.

[Took effect December 24, 1890.]

SECTION.		SECTION.	
1.	Right to adopt brand.	9	Brand prima facie evidence.
2.	Brands recorded, how.	10.	Penalty for duplicating brand records.
3.	Exclusive right to brands.	11.	Running brand, neat stock.
4.	Brands recorded, where.	12.	Violation of this act.
5.	Committee on brands	13.	Fraud through misbranding and mismarking
6.	Clerk's brand report to commissioners; publication, etc.	14.	Defacing brands; defacing hides
7	Importer's duty, conflicting brands.	15.	Violation of this act.
8.	What constitutes infringement.		

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Right to adopt brand.

(338) § **1.** Any person having cattle, hogs, sheep, goats, horses, mules or asses shall have the right to adopt a brand or mark, for the use of which he shall have the exclusive right in the county in which such ear-mark or brand is recorded.

Brands recorded, how

(339) § **2.** The county clerk of each county shall, as soon as practicable after the passage of this act, procure a suitable book or books in which all marks and brands shall be recorded, and he shall be allowed a fee of one dollar for recording such brands or marks, and a further fee of twenty-five cents, for filing for examination, as hereinafter provided, such brands or marks, said fees to be paid by the party filing the description of brand or marks for record

Exclusive rights to brands

(349) § **3.** No person shall have or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person.

Brands recorded, where

(341) § **4.** And any person so desiring may in the manner and with like effect as herein provided record his brand or mark in any county in this Territory into which his stock is liable to stray: *Provided*, That such brand or mark has not been theretofore recorded in such county by some other persons.

Committee on brands,

(342) § **5.** The authority of deciding whether a brand or mark offered for record does or does not conflict with any previously recorded brand or mark, shall be vested in a committee of four, consisting of the county clerk and the three county commissioners. All brands offered for record shall be submitted, before acceptance, to this committee, and the objection of any two shall reject a brand. It shall be the duty of the county clerk to file all brands offered for record pending the examination which shall be made at the next subsequent session of the board of county commissioners, and if the brand is accepted the ownership shall date from date of filing

Clerk's brand report to commissioners, publication, etc

(343) § **6.** It shall be the duty of the county clerk to present for examination at the first regular meeting of the county commissioners, after he shall have assumed the duties of his office, and at each regular meeting thereafter, the record of brands, and with the board of commissioners proceed to examine the present record of brands, and in any case where in the judgment of two of them a brand is found which conflicts with one previously recorded, or which might in its use endanger the property of the party owning the earliest of record, it shall be the duty of the county clerk to notify the party owning said brand last of record that the further use of the same will be illegal to the same extent as though it had never been recorded, unless previously agreed upon by owners of such brands and a joint statement be presented to the recorder of brands by such brand owners. The said notice shall be given by letter when possible, and also and in all cases by publication one month in two newspapers in general circulation in the county, the expense of which shall be paid on a proper voucher by the county commissioners; both forms of notice shall be given immediately after said examination and objection. It is expressly provided that this enactment shall not in any way effect or invalidate the ownership of animals which were branded with said brand then registered previous to the examination and rejection, the object of this act being to make illegal and enjoin from the further use of said brand. The date of the last publication shall be the date of rejection.

Importer's duty, conflicting brands.

(344) § **7.** It shall be the duty of any person who after the passage of this act brings into any county of this Territory and turns loose for grazing purposes any herd-brand or individual animals already branded, to lay before the above committee a statement of the brands of said animals; and if in the judgment of any two of them, said brands conflict wfth any previously recorded in that county, it shall be the duty of the owner or manager of said animals to brand them with a brand that the committee shall consider a full and distinguishing mark from all brands there recorded, but the owner shall be enjoined from any further use of the conflicting brand. A failure to comply with the above shall render the party so failing liable for all damages resulting from such failure, which damage may be recovered in a civil suit. It is further provided that this section shall apply to all animals now in any county in this Territory, whose brands are considered by this committee to infringe on previously recorded ones.

What constitutes infringement

(345) § **8.** In deciding as to the conflict of brands the committee will reject any one that being the same as one previously recorded has in addition any of the following, whether placed across, above, below, at either side or encircling the main brand, viz: A straight bar, a quarter, half or entire circle, a quarter, half or entire diamond, either upright or inverted, the same not constituting a true brand and rendering the owner of the same brand liable to damages by its use, saving only when one or more of these shall be filed by the owner of the first record of the main brand, in which case it may be accepted. The committee shall reject any brand formed by repetition of any letter, number or

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figure which shall have been previously recorded, whether to be placed on the same or on a different part of the animal, the exclusive right of the first record to the letter, number or figure and to repetition of it, being re-affirmed. They shall also reject all brands known as solid brands, and all ear-marks which shall remove to exceed one-half the ear. A variation in the size of a letter, number or figure, shall not constitute a new brand, and shall be rejected. A combination of letters, numbers or figures may be permitted, though the same letters, numbers or figures may have been recorded, single or together, if in the judgment of the whole committee said combination is so different from any previous record as to constitute a new brand with no danger of infringement; but in this case the objection of one member shall reject.

Brand prima facie evidence.

(346) § **9.** In all suits in law or in equity or in any criminal proceedings, when the title to any stock is involved, the brand on any animal shall be *prima facie* evidence of ownership of the person whose brand it may be: *Provided*, That such brand has been duly recorded as provided by law. Proof of the right of any person to use such brand shall be made by a copy of the record of the same, certified by the county clerk of that county or of any county in which the same is recorded, under the hand and seal of office of such county clerk.

Penalty for duplicating brand records

(347) § **10.** If any county clerk shall record the same mark or brand to more than one person he shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction, shall be punished by a fine of not exceeding one hundred dollars, which shall go to the county in which such record shall be made.

Running brand; neat stock

(348) § **11.** It shall be unlawful for any person or persons in branding any neat cattle, horses, mules, asses, sheep or goats to use what is known among stock growers as a running brand.

Violation of this act.

(349) § **12.** Any person or persons who shall violate or fail to observe any of the provisions of this act, or shall continue the use of any brand or mark after the same had been rejected by said committee as conflicting with the previously recorded brand or mark, shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

Fraud through misbranding and mismarking

(350) § **13.** Any person or persons who shall with intent to defraud, brand or misbrand, mark or mismark any neat cattle, horse, sheep, goat, ass or mule not his own; or shall intentionally brand over a previous brand, or shall cut out or obliterate a previous mark or brand, on any neat cattle, horse, sheep, goat, ass or mule, shall upon conviction in any court of competent jurisdiction be punished by imprisonment in the Territorial prison, [penitentiary] not exceeding ten years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars.

Defacing brands, destroying hides

(351) § **14.** It shall be unlawful for any person to cut or destroy

any brand upon [any cattle in this territory]; burn, or in any manner to destroy the hides of any cattle within this Territory. Chap. 4.

(352) § **15.** Any person or persons who shall violate the provisions of the two foregoing sections of this act shall be guilty of a misdemeanor. Violation of this act.

This act shall be in force and take effect from and after its passage and approval by the Governor.

CHAPTER IV.—APPOINTMENTS OF SPECIAL DEPUTIES.

An Act regulating the Appointment of Special Deputies, Marshals or Policemen by Officers authorized by Law to make such Appointments.

[Took effect December 25, 1890.]

SECTION
1. Who to be appointed.
2. Protection, how furnished.
3. Personating an officer.
4. Punishment for violation.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

(353) § **1.** That no sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals or policemen in this Territory to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals or policemen any person who shall not be a voter and have resided continuously in this Territory for the period of one year at least, and in the county where such appointment is made for the period of at least six months prior to the date of said appointment: *Provided*, That this section shall not apply to newly settled counties until one year after the settlement thereof. Who to be appointed.

(354) § **2.** No private person or corporation shall call bodies of men to enforce any of their orders, but must in all cases call upon the civil authorities for protection, which shall be furnished as provided in section one of this act. Protection, how punished

(355) § **3.** That any person or persons who shall in this Territory without due authority exercise or attempt to exercise the functions of or hold himself or themselves out to any one as a deputy sheriff, marshal, policeman, constable or peace officer, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be imprisoned for any period not more than one year, to which may be added a fine not exceeding one hundred dollars: *Provided, however*, That this section shall not be so construed as to prevent private persons from making arrests for felonies or misdemeanors committed in their presence. Assuming to be an officer.

(356) § **4.** Any person or persons violating any of the provisions of this act, shall upon conviction be liable to the same punishment as prescribed in section three hereof. Punishment for violation.

This act shall take effect and be in force from and after the final adjournment of this session of the Legislative Assembly.

CHAPTER V.—APPROPRIATIONS FOR TERRITORIAL EXPENSE.

AN ACT to make appropriations for the payment of the expenses of the Territory for the years 1890, 1891, and 1892.

[Took effect December 25, 1890.]

SECTION.
1. Appropriations for Territorial purposes.
2. Supreme Court expenses.
3. Legislative expenses.
4. Salaries of officers and clerks of the legislature.
5. Sundry appropriations.
6. Payment of the compilers of the laws.
7. Same, clerk.
8. Same, type-writer.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Appropriations for Territorial puropses.

(357) § 1. That there is hereby appropriated out of any money in the Territorial treasury not otherwise appropriated an amount sufficient to pay the following sums, or so much thereof as may be necessary for the purpose to which it is appropriated; and the Territorial Auditor shall draw warrants or give orders by Territorial scrip for such portion thereof as may be by him found due upon auditing the respective claims therefor, in favor of the persons to whom such claims are allowed, upon the Territorial treasury.

First. To the Superintendent of Public Instruction for records, books, stationery and blanks and printing of the same, for the years 1890 and 1891, the sum of eight hundred dollars. The sum of two thousand four hundred dollars as salary of Superintendent of Public Instruction for the years of 1891 and 1892. For the year 1892, the sum of four hundred dollars for office rent, lights and fuel; [the] sum of three hundred [and] fifty dollars for the year 1891. [For office rent, lights and fuel for the year 1892, the sum of four hundred dollars.]

Second. To the Territorial Auditor for records, books and stationery, the sum of four hundred dollars for the year 1891. For the year 1892, two hundred dollars, and the sum of twelve hundred dollars as salary of Territorial Auditor for the years 1891 and 1892.

Third. To the Superintendent of Public Instruction and *ex-officio* Territorial Auditor, for office furniture, three hundred dollars. For postage, one hundred dollars.

Fourth. To the Territorial Treasurer for books, records, blanks, fuel, lights and stationery, the sum of five hundred dollars for the years 1890 and 1891. For the year 1892, the sum of three hundred dollars. For postage and incidental expenses, one hundred dollars. For office rent, the sum of two hundred dollars per year. For salary of Territorial Treasurer, two thousand dollars for the years 1891 and 1892.

Fifth. To the Attorney-General for books, records, blanks and stationery, the sum of three hundred dollars per year. For office rent, lights and fuel the sum of two hundred and fifty dollars

per year. For postage, one hundred dollars. For actual travelling expenses incurred by order of the Governor, two hundred dollars. For the salary of the Attorney-General, one thousand six hundred dollars for the years 1891 and 1892.

Sixth. To the Secretary of the Territory for books, records, postage, blanks and stationery required for use in his office under the laws of the Territory, the sum of three hundred dollars for the years 1890 and 1891. For the year 1892, the sum of two hundred dollars.

Seventh. To the Governor for the enforcement of criminal laws of the Territory, the sum of one thousand dollars per year. For incidental and contingent expenses, clerk hire, expressage, telegraphing and postage, the sum of eight hundred dollars per year, if no appropriation therefor is made by Congress: *Provided*, That each of such Territorial officers shall furnish vouchers for the expenditure of the funds appropriated herein, containing the items of such expenditures, to the Auditor who shall audit the same before warrants shall issue therefor: *Provided, further*, That the account of the Auditor and Superintendent of Public Instruction shall be audited and allowed by the Governor.

Supreme Court expenses.

(358) § **2.** For the purpose of defraying the expenses of the Supreme Court, not payable by the United States, including records, books, stationery, lights, fuel, room rent and attendance, there is hereby appropriated out of any money in the Territorial treasury for the year 1891, the sum of two hundred dollars; for the year 1892, the sum of two hundred dollars.

Legislative expenses.

(359) § **3.** For the payment of the expenses of the first Legislative Assembly, not including pay of officers and clerks not paid by the United States, the sum of one thousand dollars is hereby appropriated out of the Territorial treasury,

Officers and clerks salaries.

(360) § **4.** The following sums are hereby appropriated out of any money in the Territorial treasury for salaries of the additional officers and clerks of the Council and House of Representatives in attendance on the first session of the first Legislative Assembly: To C. W. Morrison, assistant clerk, House of Representatives, from Oct. 10th to Dec. 24th, 75 days at $4.00, $300.00. To Mrs. E. L. Cherry, judiciary committee clerk, House of Representatives, from Oct. 4th to Dec. 24th, 81 days at $4.00, $324.00. To Mrs. Jennie Colton, ways and means committee clerk, House of Representatives, from Oct. 6th to Dec 24th, 79 days at $4.00, $316.00. To George W. Reaves, assistant enrolling clerk, House of Representatives, from Oct. 10th to Dec. 24th, 75 days at $4 00, $300.00. To W. W. Asher, assistant enrolling clerk, House of Representatives, from Dec. 8th to Dec. 24th, 17 days at $4 00, $68.00. To Luther West, assistant enrolling clerk, House of Representatives, from Dec. 13th to Dec 24th, 12 days at $4 00, $48 00. To Maud Ayars, page, House of Representatives, from Aug. 29th to Dec. 24th, 118 days at $1.00, $118.00. To Florence Hadly, page, House of Representatives, from Aug. 29th to Dec. 24th, 118 days at $1.00, $118 00. To Albert Couch, page, House of Representatives, from Aug. 29th to Dec. 24th, 118 days at $1.00, $118.00. To William Taylor, door-keeper, House of Representatives, from Oct 10th to

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Dec. 24th, 75 days at $3.50, $262.50. To G. S. Fenton, janitor of House of Representatives, Oct. 10th to Dec. 24th, 75 days at $2.50, $187.50. Susie Griffith, 9 days at $4.00, $36.00. Rita Elliott, 9 days at $4.00, $36.00. Y. V. Featherby, 6 days at $4.00, $24.00. M. J. Griffith, 6 days at $4.00, $24.00. Alice Veach, 5 days at $4 00, $20.00. Cora A. Diehl, 5 days at $4.00, $20.00. To Joseph H. Morris, clerk of the ways and means committee in the Council from September 26th, to Dec. 24th, 90 days at $4.00, $360.00. To Charles W. Beacan, clerk of judiciary committee in the Council from Sept 29th to Nov. 13th. 45 days at $4.00, $180.00. To William G. Friedly, clerk of the judiciary committee in the Council from Nov. 13th to Dec. 24th, 42 days at $4.00, $168.00. To Mrs. W. Daisy Ueland-Svegeborg, assistant clerk of the Council from Oct. 23rd to Dec. 24th, 63 days at $4.00, $252.00. To Percy R. Smith, assistant enrolling clerk in the Council from Oct. 25th to Dec. 24th, 61 days at $4.00, $244.00. To Thomas R. Jackson, door-keeper in the Council from Aug. 29th to Dec. 24th, 118 days at $3.50, $413.00. To Carry Melone, page in the Council from Aug. 29th to Dec. 24th, 118 days at $1.00, $118. To Minnie Galloway, assistant enrolling clerk in the Council from Nov. 13th to Dec. 24th, 42 days at $4.00, $168.00. To Lillye Laux, assistant enrolling clerk in the Council from Dec. 8th to Dec. 24th, 17 days at $4.00, $68.00. To Blockie Jamison, assistant enrolling clerk in the Council from Dec. 8th to Dec. 24th, 17 days at $4.00, $68.00. To Mattie Lane, assistant enrolling clerk in the Council from Dec. 8th to Dec. 24th, 17 days $4.00, $68.00. To Emma Harrington, assistant enrolling clerk in the Council from Dec. 8th to Dec. 24th, 17 days $4.00, $68.00. To Clarence Elexcis, janitor in the Council from Dec. 13th to Dec. 24th, 12 days at $2.50, $30 00.

Sundry appropriations

(361) § **5**. To the following named persons there is hereby appropriated out of any money in the Territorial treasury the following sums:

First. To W. L. Rhodes for four dozen chairs furnished the first Legislative Assembly, the sum of thirty-four dollars.

Second. To A. H. Waite for drayage for the first Legislative Assembly, one dollar and twenty-five cents.

Third. To Tontz and Hirsche for water-cooler, hat racks, stand and duster furnished Council chamber, the sum of thirteen dollars and twenty-five cents.

Payment for compilers.

(362) § **6**. For the payment of two clerks for the Secretary of the Territory, to be chosen by him, one to be chosen from the Council and one from the House of Representatives, to compile and index the laws for publication under the direction of the Secretary of the Territory the sum of four dollars per day of eight hours each for the days actually and necessarily employed, not to exceed forty-five [days], the sum of three hundred and sixty dollars, or so much thereof as may be necessary, to be paid out only on an account approved by the Secretary. For office rent, fuel, stationery and lights for such clerks, forty dollars.

Same, clerk

(363) § **7**. For the salary of one clerk (in addition to the one from the Council and the one from the House of Representatives)

to assist in the preparation of the laws for publication and to be named by the Secretary of the Territory and to work under his order, the sum of four dollars per day for the time necessarily employed, to be paid by the Territory, if not paid by the United States, when the work is completed.

Same, typewriter.

(364) § **8**. For the salary of one expert stenographer and typewriter, to assist in the preparation of the laws for publication, four dollars per day for each day necessarily employed in such work, such stenographer to be appointed by the Secretary of the Territory and to work under his direction.

This act shall take effect and be in force from and after its passage and approval.

CHAPTER VI.—ASSIGNMENTS.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

SECTION.

1. When assignment allowable.
2. Insolvency defined.
3. Assignment may provide for subsisting liability.
4. Assignment void in certain cases.
5. Assignment executed, how.
6. Void unless so made.
7. Rights of assignee.
8. Inventory required.
9. Inventory to be verified.
10. Record of the assignment.
11. Same, When more than one assignor.
12. Must be recorded within twenty days.
13. When assignment embraces real property.
14. Assignee must give bond.
15. When authority of assignee begins.
16. Assignee may be required to account.
17. Same, applies to assignments heretofore made.
18. Exempt property does not pass to assignee.
19. Compensation of assignee.
20. Good faith protects assignee.
21. Assignment cannot be cancelled without consent.

Assignment for the benefit of creditors is allowable, when

(365) § **1**. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust towards the satisfaction of his creditors, in conformity to the provisions of this title; subject, however, to the provisions of this code relative to trusts and to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations or by other specified classes of persons: *Provided, moreover*, That such assignment shall not be valid if it be upon, or contain any trust or condition by which any creditor is to receive a preference or priority over any other creditor; but in such case the property of the insolvent shall become a trust fund to be administered in equity, in the district court, and shall inure to the benefit of all the creditors in proportion to their respective claims or demands.

Insolvency defined,

(366) § **2**. A debtor is insolvent, within the meaning of this title, when he is unable to pay his debts from his own means as they become due.

Assignment may provide for subsisting liability.

(367) § **3**. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

Assignments are void in certain cases,

(368) § **4**. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

First. If it tend to coerce any creditor to release or compromise his demand.

Second. If it provide for the payment of any claim known to the assignor to be false or fraudulent; or for the payment of more upon any claim than is known to be justly due from the assignor.

Third. If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid, other than property exempt by law from execution.

Fourth. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.

Fifth. If it exempt him from liability for neglect of duty or misconduct.

An assignment is executed, how.

(369) § **5.** An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto, authorized by writing. It must be acknowledged, or proved and certified, in the mode prescribed by sections 10 and 11 of this chapter.

Void unless so made.

(370) § **6.** Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

Rights of assignee.

(371) § **7.** An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

Inventory is required.

(372) § **8.** Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file in the manner prescribed by section 10 a full and true inventory, showing:

First. All the creditors of the assignor.

Second. The place of residence of each creditor, if known to the assignor, or if not known, that fact must be stated.

Third. The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account or otherwise.

Fourth. The true consideration of the liability in each case, and the place where it arose.

Fifth. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor.

Sixth. All property of the assignor at the date of the assignment, which is exempt by law from execution; and,

Seventh. All the assignor's property at the date of the assignment both real and personal, of every kind not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

Inventory to be verified

(373) § **9.** An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to effect that the same is in all respects just and true, according to the best of the assignor's knowledge and belief.

Record of the assignment.

(374) § **10.** An assignment for the benefit of creditors must be recorded, and the inventory required by section 8 filed with

the register of deeds of the county in which the assignor resided at the date of the assignment; or, if he did not then reside in this Territory, with the like officer of the county in which his principal place of business was then situated; or, if he had not then a residence or place of business in this Territory, with the like officer of the county in which the principal part of the assigned property was then situated.

Same—More than one assignor.

(375) § **11.** If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded and a copy of the inventory required by section 8 must be filed with the register of deeds of every county in which any of the assignors resided at its date, or in which any of them, not then residing in this Territory, had then a place of business.

Must be recorded within twenty days

(376) § **12.** An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and incumbrancers in good faith and for value, if the assignment is not recorded, and the inventory required by section 8 filed, pursuant to section 10, within twenty days after the date of the assignment.

Where assignment embraces real property.

(377) § **13.** Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of article 4 of the chapter on recording transfers, as well as those of this title.

[Article 4 of the chapter on recording transfers:

SECTION 3293. Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

SECTION 3294. The term "conveyance," as used in the last section, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or incumbered, or by which the title to any real property may be affected, except wills, executory contracts for the sale or purchase of real property, and powers of attorney.

SECTION 3295. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded in the same office in which the instrument containing the power was recorded.

SECTION 3296. The recording and deposit of an instrument, proved and certified according to the provisions of sections 3270, 3283, 3284, 3285 and 3286, are constructive notice of the execution of snch instrument to all purchasers and incumbrancers subsequent to the recording; but the proof, recording and deposit do not entitle the instrument, or the record thereof, or the transcript of the record, to be read in evidence.

SECTION 3297. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.—Dakota Code.]

[SECTION 3270. An instrument proved and certified pursuant to sections 3285 and 3286 may be recorded in the proper office, if

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the original is at the same time deposited therein, to remain for public inspection, but not otherwise.

SECTION 3283. Proof of execution of an instrument, when not acknowledged, may be made either:

First. By the party executing it, or either of them; or,

Second. By a subscribing witness; or,

Third. By other witnesses, in cases mentioned in sections 3285 and 3286.

SECTION 3284. If, by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

SECTION 3285. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

First. When the parties and all the subscribing witnesses are dead; or,

Second. When the parties and all the subscribing witnesses are non-residents of the Territory; or,

Third. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,

Fourth. When the subscribing witness conceals himself, or can not be found by the officer by the exercise of due diligence in attempting to serve the subpœna or attachment; or,

Fifth. In case of the continued failure or refusal of the witness to testify, for the space of one hour, after his appearance.

SECTION 3286. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

First. The existence of one or more of the conditions mentioned therein; and,

Second. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and

Third. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

Fourth. The place of the residence of the witness.]—Dakota code.]

Assignee must give bond

(378) § **14**. Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to this Territory, in double the amount of the value of the property assigned, with sufficient sureties, to be approved by the judge of the district court of the county in which the original inventory is filed, and conditioned for the faithful discharge of the trust, and due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

When authority of assignee begins.

(379) § **15**. Until the inventory and affidavit required by sections 8 and 9 have been made, and the assignment has been duly recorded and the inventory filed, and the assignee has given a bond as required by the last section, an assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

When assignee to account.

(380) § **16**. After the lapse of six months from the date of filing his bond the assignee, on motion of any one of the creditors, with ten day's notice, accompanied by an affidavit of the creditor, his agent or attorney, setting forth his claim and the amount thereof, and that no account has been filed within six months, may be ordered by the court, or by the judge thereof, at any place in his judicial district, to render an account of his proceedings, within a given time, to be fixed by the court, or the judge thereof, not to exceed fifteen days. All proceedings under this chapter shall be subject to the order and supervision of the judge of the district court of the county in which such assignment was made, and such judge may, from time to time, in his discretion, on the petition of one or more of his creditors, by order, citation, attachment or otherwise, require any assignee or assignees to render accounts and file reports of his or their proceedings and of the conditions of such trust estate, and may order or decree distribution thereof; and such judge may, in his discretion, for cause shown, remove any assignee or assignees and appoint another or others instead, who shall give such bond as the judge, in view of the conditions and value of the estate, may direct, and such order or removal and appointment, shall in terms transfer to such new assignee or assignees all the trust estate, real, personal and mixed, and may be recorded in the deed records in the office of registers of deeds of any county wherein any real estate affected by the assignment may be situated. And such judge may by order, which may be enforced as upon proceedings for contempt, compel the assignee or assignees so removed to deliver all property, money, choses in action, book accounts and vouchers, to the assignee or assignees so appointed, and to make, execute and deliver to such new assignee or assignees such deeds, assignments and transfers as such judge may deem proper, and to render a full account and report of all matters connected with such trust estate. Whenever any assignee so removed shall have fully accounted for and turned over to the assignee or assignees appointed by the judge, all the trust estate and made a full report of all his doings, and complied with all orders of the judge touching such estate, and also whenever an assignee has fully complied with his trust, he may by order of the judge be fully discharged from all further duties, liabilities and responsibilities connected with the trust. In either case he shall give notice by publication in some newspaper of the county, if there be one printed and published therein, if not, in a newspaper published at the capital of the Territory, once in each week, for at least three weeks, that he will apply to such judge for such discharge, at a time and place to be stated in such notice, which time shall not be more than three weeks after the last publication

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of the notice. If upon the hearing the judge shall be satisfied that the assignee is entitled to be discharged, he shall make an order accordingly; or if in the opinion of the judge, anything remains to be done by such assignee, he may require the performance thereof before making such order. Such order shall have the effect of discharging the assignee and his sureties from all further responsibility in respect to the trust, and such order shall not be refused on account of any failure on the part of the assignee to comply with the formal provision of law, where no loss or damage to any one shall have occurred through such failure. Whenever the trust estate shall have been taken out of the hands of the assignee by proceedings in bankruptcy in the federal court, the assignee may in like manner be discharged, upon showing that he has fully accounted with the assignee in bankruptcy, and turned over to him the whole of the trust estate.

Applies to assignments heretofore made

(381) § **17**. Section 16 shall apply to all such assignments heretofore made in this Territory.

Exempt property does not pass to assignee.

(382) § **18**. Property exempt from execution, and insurances upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

Compensation of assignee.

(383) § **19**. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians; but the assignment cannot grant more, and may restrict the commission to a less amount, or deny them altogether.

Good faith protects assignee

(384) § **20**. An assignee for the benefit of creditors is not to be held liable for his acts done in good faith in the execution of the trust, merely for the reason that the assignment is afterward adjudged void.

Assignment cannot be cancelled without consent

(385) § **21**. An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the assignee, cannot afterward be cancelled or modified by the parties thereto, without the consent of every creditor affected thereby.

CHAPTER VII.—ATTORNEYS-AT-LAW.

AN ACT prescribing qualifications, powers and duties of attorneys and counsellors at law.

[Took effect December 25, 1890.]

SECTION.		SECTION.	
1.	Licensed attorneys, examination, certificate.	9.	Bond dissolves lien.
2.	Oath in court.	10.	License suspended.
3.	Non-resident attorney.	11.	Same, cause.
4.	Attorney's duties.	12.	Same, method.
5.	Disbarred, for what.	13.	Same, trial.
6.	Receipt of money.	14.	Same, judgment.
7.	Proof of authority for appearing in court.	15.	Same, appeal.
8.	Attorney's lien for fees.	16.	Embezzlement.
		17.	Attorney's claim; client's bond.
		18.	Same.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Licensed attorneys

(386) § **1.** All persons, who by the laws heretofore in force, were permitted to practice as attorneys and counsellors at law, may continue to practice as such, and hereafter any person who is an inhabitant of this Territory, who satisfies any court of record, either on examination or by certificate of admission from any other Territory or State, that he possesses the requisite learning, and is of good moral character, may by such court be licensed to practice as an attorney and counsellor: *Provided,* That no person shall be admitted to practice in the Sepreme court unless he shall have been first licensed to practice in some one of the district courts, or on the presentation of a certificate of admission to practice in the Supreme Court of some other Territory or State.

Oath.

(387) § **2.** Upon being permitted to practice as attorneys and counsellors at law, they shall, in open court, take the following oath:

You do solemnly swear that you will support, protect and defend the constitution of the United States, and the Organic Act of the Territory of Oklahoma; that you shall do no falsehood or consent that any be done in court, and if you know of any you will give knowledge thereof to the judges of the court or some one of them; that it may be reformed; you shall not wittingly, willingly or knowingly promote, sue or procure to be sued, any false or unlawful suit, or give aid or consent to the same; you shall delay no man for lucre or malice, but shall act in the office of attorney in this court according to your best learning and discretion, with all good fidelity as well to the court as to your client, so help you God.

Non resident attorney.

(388) § **3.** Any practicing attorney of another State or Territory having professional business in the courts of this Territory, may be admitted to practice therein upon taking the oath aforesaid.

Attorney's duties.

(389) § **4.** It is the duty of an attorney and counsellor:

First. To maintain the respect due to the courts of justice and judicial officers.

Second. To counsel or maintain no other actions, proceedings or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense.

Third. To employ for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of facts or law.

Fourth. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client.

Fifth. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

Sixth. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest,

Seventh. Never to reject for any consideration personal to himself the cause of the defenseless or the oppressed.

Disbarred, for what.

(390) § **5.** An attorney and counsellor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or party to an action or proceedings, is liable to be disbarred and shall forfeit to the injured party treble damages, to be recovered in a civil action.

Receipt of money.

(391) § **6.** An attorney and counsellor has power: to receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and upon payment thereof and not otherwise to discharge the claim or acknowledge satisfaction of the judgment.

Proof of authority.

(392) § **7.** The court may, on motion, for either party and on the showing of reasonable grounds therefor, require the attorney for the adverse party or for any one of the several adverse partiesr to produce or prove by his oath or otherwise the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear.

Attorney's lien.

(393) § **8.** An attorney has a lien for a general balance for compensation in and for each case upon: *First*, Any papers belonging to his client which have come into his hands in the course of his professional employment in the case for which the lien is claimed: *Second*, Money in his hands belonging to his client in the case: *Third*, Money due his client in the hands of the adverse party, or attorney for such party in an action or proceeding in which the attorney claiming the lien was employed from the time of giving notice in writing to such adverse party or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed and in specific terms, for what services: *Fourth*, After judgment in any court of record such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment docket opposite the entry of the judgment.

Bond dissolves lien.

(394) § **9.** Any person interested may release such lien by executing a bond in the sum double the amount claimed, or in such sum as may be fixed by a judge, payable to the attorney, with security to be approved by the clerk of the court, conditioned to pay the amount finally due the attorney for his services, which amount may be ascertained by suit on the bond.

License suspended.

(395) § **10.** Any court of record may revoke or suspend the license of an attorney or counsellor at law to practice therein, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall have been made, and an opportunity shall have been given to him to be heard in his defense.

Same, cause

(396) § **11.** The following are sufficient causes for revocatiou or suspension: *First*, When he has been convicted of a felony, or of a misdemeanor involving moral turpitude, in either of which cases the record of conviction is conclusive evidence: *Second*, When he is guilty of a wilful disobedience or violation of the order of the court, requiring him to do or forbear an act connected

with or in the course of his profession; *Third*, For his wilful violation of any of the duties of an attorney or counsellor.

Same, method.

(397) § **12.** The proceeding to remove or suspend an attorney may be commenced by direction of the court, or on motion of any individual. In the former case, the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it.

Same, trial.

(398) § **13.** To the accusation he may plead or demur, and the issues joined thereon shall in all cases be tried by the court, all the evidence being reduced to writing, filed and preserved.

Same, judgment.

(399) § **14.** If the accused plead guilty or fail to answer, the court shall proceed to render such judgment as the case requires.

Same, appeal.

(400) § **15.** In case of suspension or removal being ordered by a district court, an appeal therefrom lies to the Supreme Court, and all the original papers, together with the transcript of the record shall thereupon be transferred to the Supreme Court, to be there considered and finally acted upon. A judgment of acquittal by the district court is final.

Embezzlement.

(401) § **16.** An attorney who receives the money or property of his client in the course of his professional business and refuses to pay or deliver it in a reasonable time after demand, is guilty of embezzlement.

Attorney's claim, clients bond.

(402) § **17.** When an attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section until the person demanding the money or property proffers sufficient security for the payment of the amount of the attorney's claim when it is legally ascertained.

Same.

(403) § **18.** Nor is he in any case liable as aforesaid, provided he gives sufficient security that he will pay over the whole or any portion thereof to their claimant when he is found entitled thereto.

This act shall take effect and be in force from and after the date of the final adjournment of the first session of the Legislative Assembly.

CHAPTER VIII.—BANK DEPOSITORS.

AN ACT providing for the security of bank depositors.

[Took effect December 25, 1890]

SECTION.
1. Insolvent bank receiving valuables or money.
2. Violation of above section.
3. Knowledge of bank's financial condition.
4. Individual liability of employes for deposits.
5. Executors and administrators of employes.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Insolvent bank receiving valuables or money

(404) § **1.** It shall be unlawful for any president, director, manager, cashier, or other officer or clerk of any banking institution, or any private banker or officer or clerk of a private bank doing business in this Territory, to receive or assent to or permit the reception of any deposit of money or other valuable thing in such bank or banking institution; or for any such banker, officer

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or clerk to create or assent to or permit the creation of any debt or indebtedness by such bank or banking institution, in consideration or by reason of which indebtedness, any money or valuable property, shall be received into such bank or banking institution after he shall have knowledge of the fact that it is insolvent or in failing circumstances.

Violation of above section

(405) § **2.** Any person offending against or violating the provisions of the preceding section shall be deemed guilty of larceny, and upon conviction thereof he shall be punished in the same manner and to the same extent as provided by law for stealing property of the same value.

Knowledge of bank's financial condition.

(406) § **3.** It is hereby made the duty of every person or officer mentioned in section one of this act to know the condition of the bank or banking institution with which he is connected, as to solvency, and his failure to know its financial condition shall be no defense to any prosecution or civil action brought under the provisions of this act.

Individual liability of employes for deposits

(407) § **4.** Every officer, director and clerk, of a bank or banking institution, shall be held individually liable for the payment of any deposit received in violation of section one of this act, and all such persons may be sued either jointly or severally.

Executors and administrators of employes.

(408) § **5.** The civil remedies provided in this act may be enforced against the executors and administrators of such deceased officers, directors or clerks.

This act shall take effect and be in force from and after the final adjournment of the first session of the Legislative Assembly.

CHAPTER IX.—BOARD OF HEALTH.

An Act creating a Board of Health and Regulating the Practice of Medicine.

[Took effect December 25, 1890.]

SECTION.
1. Board of Health, officer's qualifications.
2. Same, officer's duties.
3. Same, meetings.
4. Powers and duties of board.
5. Superintendent's salary and mileage.
6. President's and vice-president's salaries and mileage.
7. County board of health.
8. Same, officers and duties.
9. Same, meetings.
10. Same, powers, expenses, how paid.
11. County superintendent of health, powers and duties of.
12. Same, salary and mileage; president of county board of health, mileage.
13. Superintendent of public health, reports and recommendations.
14. Who allowed to practice medicine, conditions regulating same.
15. Vacancies in office, how filled.
16. Boards of health previously existing.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Board of health, officers' qualifications.

(409) § **1.** There is hereby established a Territorial Board of Health of the Territory of Oklahoma composed of a president, vice-president and superintendent of public health. The superintendent of public instruction of said Territory shall be *ex-officio* president of said board. The Governor shall appoint some suitable person, resident of this Territory, vice-president, and he shall also appoint, by and with the advice and consent of the council, said superintendent of public health who shall be learned in medicine, a graduate of some medical college recognized by the

American Medical Association, and a resident of the Territory; and the several persons thus appointed shall hold their offices for two years and until their successors are elected and qualified.

Same, officers' duties

(410) § **2.** The president of said board shall preside at the meetings thereof, and the vice-president shall perform the duties of the president in his absence. The superintendent of public health shall be *ex-officio* secretary of said board. He shall keep a record of all proceedings of the Territorial Board of Health, and of his own acts as such superintendent, and he shall perform such other duties as are prescribed by this act, or may be prescribed by the Territorial Board of Health.

Same, meetings.

(411) § **3.** The several persons composing said Territorial Board of Health shall meet as often as once in every six months at such place in said Territory as they may from time to time appoint.

Powers and duties of board.

(412) § **4.** Said Territorial Board of Health shall have power and it shall be their duty:

First. To fix the time and place of the meeting of said board, subject only to the provisions of action [section] three.

Second. To make rules and regulations for the government of said board, its officers and its meetings.

Third. To make and enforce any and all needful rules and regulations for the prevention and cure, and to prevent the spread of any contagious, infectious or malarial diseases among persons and domestic animals.

Fourth. To establish quarantine, and isolate any persons affected with contagious or infectious disease.

Fifth. To isolate, kill, or remove any animals affected with contagious or infectious disease.

Sixth. To remove or cause to be removed any dead, decaying or putrid body, or any decayed, putrid or other substance that may endanger the health of persons or domestic animals.

Seventh. To condemn and cause to be destroyed any impure or diseased article of food that may be offered for sale.

Eighth. To superintend the several boards of health in the cities, villages and townships, and the county boards of health of the several counties.

Ninth. To empower and direct the superintendent of public health to do or cause to be done any and all the things mentioned in subdivisions 4, 5, 6, 7 and 8 of this section.

Superintendent's salary and mileage.

(413) § **5.** The superintendent of public health shall be paid a yearly salary of five hundred dollars in equal installments, at the end of every three months. He shall also be paid five cents per mile for every mile actually and necessarily travelled in the performance of his official duties, and such other sum or sums as he may necessarily pay or become liable to pay, for the official books, records and papers kept by him, and for the printing of his reports, and such circulars and blanks as may be required for the proper conduct of the business of his office, not to exceed in the aggregate the sum of three hundred dollars. The accounts of the superintendent for his mileage and said other expenses of his office shall be audited by said Territorial Board of Health and the

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same together with his salary shall be paid out of the Territorial treasury.

President and vice-president, salaries, mileage,

(414) § **6.** The president and vice-president of said Territorial Board of Health shall receive no compensation for the performance of their official duties, but they shall be paid five cents for every mile actually and necessarially travelled, and such other necessary expenses as they may pay or incur in attending the meetings of said boards or in the performance of their duties as such officers.

County board of health.

(415) § **7.** At the first meeting of said Territorial Board of Health they shall appoint two persons from each county, residents thereof, who, with the county superintendent of public instruction of the county from which they are appointed, shall constitute a county board of health for such county. The county superintendent of public instruction shall be the president of such county board of health. One of the persons so appointed from each county shall be learned in medicine and shall hold a license to practice medicine from the superintendent of public health who shall be superintendent of health in the county for which he is appointed. The other person so appointed by said board from such county shall be vice-president of the county board of health.

Same, officers and duties.

(416) § **8.** The president of each county board of health shall preside at the meetings thereof and in his absence the vice-president shall perform the duties of president. The county superintendent of health shall be *ex-officio* secretary of the board of health of the county. The said county superintendent of health shall keep a record of all the proceedings of such board, and of his official acts, and he shall, at the end of every month make a full report in writing to the superintendent of public health of the proceedings of the county board of health of his official acts, and shall, whenever danger to the health of persons or domestic animals is threatened, or whenever any contagious or infectious disease occurs in his county, either among persons or domestic animals, immediately report the same to the superintendent of public health.

Same, meetings.

(417) § **9.** The several county boards of health shall meet at the county seats of their respective counties, at such time within thirty days after the appointment of the county superintendent of health as he may designate. Notice of the time and place of such meeting shall be by him given to the other members of the said county board, at least five days prior to such meeting, and thereafter said county board of health shall meet at the county seat as often as once in every three months.

Same, powers, expenses, how paid.

(418) § **10.** The several county boards of health shall have power within their respective counties, subject to the supervisory control of the Territorial Board of Health, and the superintendent of public health, to do and perform all the things mentioned in subdivisions 3, 4, 5, 6, 7, and 8, of section four. All expenses actually and necessarily paid or incurred by the county boards of health in carrying out the provisions of this act shall be audited by said board, and certified to the county commissioners of the

county where such expenses were incurred, and shall be paid the same as other expenses are paid.

County superintendent of health, powers and duties of.

(419) § **11.** The county superintendent of health shall have charge of and superintend, subject to the approval of the board of which he is a member, and the supervisory control of the Territorial Board of Health and superintendent of public health, in all the matters and things mentioned in subdivisions 4, 5, 6 and 7, of section four within his county, and in case of immediate danger to the health of persons or of domestic animals, he may act as in his judgment he may deem best, without consultation with the other members of the county board of health, for the prevention of such danger, and he shall immediately report such action to the president of the county board of health, and to the superintendent of public health.

Same, salary and mileage; president of county board of health, mileage.

(420) § **12.** The president of the county board of health shall receive no other compensation than that which is provided for. [He] shall receive five cents for every mile actually and necessarily travelled in the performance of his duties as a member of said board. The county superintendent of health shall receive three dollars per day for every day in which he may be actually and necessarily engaged and five cents per mile for every mile actually and necessarily travelled in the performance of his duties, and he shall also receive such other sum or sums as he may necessarily pay or become liable to pay in carrying out and performing the various duties imposed upon him under the provisions of this act or by the county board of health, all of which accounts for services, mileage and other expenses shall be audited by the county board of health and certified to the county commissioners of the county, and paid as other county expenses are paid.

Superintendent of public health, reports and reccommendations.

(421) § **13.** The superintendent of public health shall, on the first day of December 1892, and biennially thereafter, make a full report to the Governor, and to the legislative assembly of the Territory of Oklahoma, which report shall show all that has been done by the Territorial Board of Health, and by such superintendent of public health during the two years preceding the making of such report; the number of cases treated by such superintendent of public health, and in each of the counties by the county superintendent of health the character and extent during such time of all the contagious or infectious diseases that have been reported to said superintendent of public health; and he shall also report a full statement of all expenditures of said Territorial Board of Health, and in each of the organized counties in this Territory by the county board of health; and he shall also report such recommendations as he may deem advisable for the better protection of the public health and the prevention or cure of contagious or infectious diseases of persons and of domestic animals.

Who allowed to practice medicine; conditions regulating same.

(422) § **14.** No person shall be permitted to practice [medicine], in any of its departments in this Territory, unless he be a graduate of a medical college, or unless upon examination before a board composed of the superintendent of public health and two other physicians to be selected by the Territorial Board of Health, such person shall be found proficient in the practice of medicine

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and surgery, and shall be found upon proof to have been actually engaged in the practice of medicine for a term of not less than five years, and no person shall practice medicine unless he be of good moral character, and is not an habitual drunkard. Any person possessing the qualifications mentioned in this section shall, upon presentation of his diploma, or proof thereof by affidavit, if the same is lost or destroyed, and upon the affidavit of two reputable citizens from the county where he resides that such applicant possesses the qualifications of a physician, as prescribed herein, to the superintendent of public health, together with a fee of two dollars, receive from such superintendent of public health, a license, certifying the applicant to be a practicing physician, and having the qualifications for such, as prescribed in this section, which license shall be recorded in the office of the register of deeds in the county where such practicing physician resides. Any person who practices medicine or attempts to practice medicine without complying with the provisions of this section, shall be deemed guilty of a misdemeanor, and any person shall be regarded as practicing medicine within the meaning of this section who shall profess publicly to be a physician and to prescribe for the sick, or who appends to his name M. D., but nothing in this section shall be construed to prohibit students from prescribing under the supervision of preceptors, or to prohibit gratuitous services in case of emergency, nor shall this section apply to commissioned surgeons in the United States army and navy. Any person violating any of the provisions of this act, or who shall prevent or attempt to prevent the several officers of the public health, or persons employed by them, from performing any of the duties prescribed in this act to be performed by any such officers, or any practicing physician who shall fail to report to the county superintendent of health the existence of any contagious or infectious disease, and any person who shall wilfully conceal any case of contagious or infectious disease, either among persons or animals, shall be deemed guilty of a misdemeanor. The district court shall, upon the complaint of any member of the Territorial Board of Health or the county board of health where he resides have power to cancel any license that may be issued to any person to practice medicine where such license was fraudulently obtained, or where the person to whom such license was issued has been guilty of violating any provisions of this act.

Vacancies in office, how filled.

(423) § **15.** In case any vacancy shall occur in the office of vice-president or superintendent of public health, such vacancy shall be filled by appointment by the Governor, and the person so appointed to fill such vacancy shall hold for the unexpired term of office in which such vacancy occurs. In case any vacancy occurs in the office of vice-president or superintendent of health in any of the county boards of health, the superintendent of public health shall appoint some suitable person to fill such vacancy, and the person so appointed shall hold such office until the next meeting of the Territorial Board of Health, and until a successor to such officer has been appointed by said Territorial Board of Health.

(424) § **16.** Nothing contained in this act shall in any manner effect any board of health heretofore established or that may be hereafter established in any city, village or incorporated town: *Provided, however,* That all such boards of health shall be under the superintending control of the Territorial Board of Health.

Boards of health previously existing.

This act shall take effect and be in force from and after the date of its approval.

CHAPTER X.—BONDS.

AN ACT to provide for the issuance of bonds for the payment of the contingent expenses of the Territorial, county and city governments until such times as revenue may be derived for that purpose.

[Took effect December 24, 1890.]

ARTICLE.
1. Territorial bonds.
2. County bonds.
3. City, town and village bonds.

ARTICLE 1.—TERRITORIAL BONDS.

SECTION.
1. When issued.
2. Auditor to certify to assessment.
3. Bond; form; amount; interest.
4. Amount of indebtedness; bonds not to exceed.
5. Notice; bonds; amount, how determined.
6. How signed; proceedings in court.
7. How negotiated.
8. Further issuance, when.
9. For what issued.
10. Redeemable, when.
11. Tax levy to pay interest and principal; duty of auditor and county commissioners.
12. Territorial scrip.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

When issued.

(425) **1.** As soon as there shall be made and filed with the county clerks of the various counties of this Territory, an assessment of the property therein for the purpose of taxation, then it shall be lawful for the Territory of Oklahoma and the various counties and cities therein, to issue bonds as in this act provided for the purpose of paying the contingent expenses of the Territory, county or city, as the case may be, until such time as revenue may be derived therefor from the collection of taxes; but bonds shall not be issued under this act for any other purpose whatsoever.

Auditor to certify to assessment

(426) § **2.** As soon as the assessments are returned in the various counties, they shall be certified to the auditing officer of the Territory and be consolidated by him and the aggregate amount thereof be found.

Form of bonds, amount—interest.

(427) § **3.** When thus ascertained, the Governor, Secretary of the Territory and the auditing officer, shall determine the form of bond to be issued on behalf of the Territory under this act. Each bond shall be in a sum not to exceed one thousand dollars and not less than one hundred dollars, and shall bear an annual rate of interest not to exceed six per cent payable annually.

Amount of indebtedness; bonds not to exceed.

(428) § **4.** Before issuing such bonds, the Governor, Secretary of the Territory and the auditing officer, shall carefully investigate

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the aggregate amount of claims allowed against the Territory and incurred in the necessary operation of the Territorial Government from its foundation up to that time, which remains due and unpaid. The bonds so issued at that time shall not be in excess of the amount then so found to be outstanding, due and unpaid.

Notice, bonds; amount, how determined.

(429 § **5.** Notice shall be published in two newspapers printed in the county where the Territorial offices are kept, stating that on a particular day, naming it, the Territorial Auditor and Treasurer will proceed before the district court of the county to make a showing and have the court hear and determine the amount of the Territorial indebtedness, and to sign the bonds to be issued for the payment thereof, and giving notice that all persons interested may be present at the time the proof is made and bonds signed by the judge stating the amount of indebtedness as before determined, and no bond shall be signed by the judge until such notice shall have been given for at least seven days.

How signed; proceeding in court.

(430) § **6.** The bonds so issued shall, each and all of them, be signed by the Governor, by the Secretary of the Territory and the auditing officer, and when so signed a careful record of the number of each bond, and the amount thereof, shall be preserved by the auditing officer. Thereafter he and the Secretary of the Territory and the Territorial Treasurer, or some two of them, shall go before the district court of the county in which their offices may be located and in open court make proof to the satisfaction of the district judge of the existence, the amount and character of the indebtedness owed by the Territory, for which the bonds are to be issued. On proof being made to the judge of the court, of the existence, character and amount of debts, and upon his finding that they are of the class and character for which bonds are authorized to be issued under this act, he shall cause to be made upon the records of the court a statement to that effect, and show the amount, if any, of the indebtedness that he finds existing, and shall then in open court, proceed to sign each bond to be so issued until the amount of the bonds signed by him in the aggregate shall equal the amount of the indebtedness so proven, and shall thereupon deliver the same to the Territorial Treasurer, who shall then and there receipt to the Territorial Auditor for the amount thereof, and be chargable therefor upon his bond. It is hereby made the duty of the district court to suspend all other business upon the day and during the time the proof, by this section required, is being made and to permit the proof to be made on the day designated by the notice.

How negotiated.

(431) § **7.** When said bonds are received by the Treasurer, it shall be his duty with the consent, advice and concurrence of the Governor and Secretary of the Territory, to proceed to negotiate the same at not less than par, and the Treasurer shall hold the proceeds thereof in his hands, and shall apply the same to the payment of the Territorial warrants, or scrip outstanding, and shall be chargeable with the amount received from said bonds, and credited with the payments made in manner and form as for taxes received by him.

Further issuance, when.

(432) § **8.** When the indebtedness of the Territory incurred

in the actual and necessary operating of the Territorial Government, shall after the issue of one set of bonds, have aggregated the amount of twenty-five hundred dollars outstanding, demanded and unpaid; *if Territorial scrip be circulating at a discount greater than ten per cent*, it shall be the duty of the Territorial officers to again follow the same method of procedure, and issue bonds in that sum, for the purpose of raising the money with which to liquidate such indebtedness; but in no event shall bonds be issued for the indebtedness incurred except as in the next section provided.

For what issued.

(433) § **9.** The indebtedness for the payment of which bonds may be issued, shall consist of office rent, payable by the Territory, fuel, lights, stationary, furniture, salaries of officers, travelling expenses, where allowed by law to the officers, clerk hire, expenses of the Territorial Legislative Assembly, and its employes authorized to be paid by the Territory, expenses of courts, chargeable to the Territory, and all matters whatsoever, including repairs, pertaining to the necessary and actual operation of the Territorial Government.

Redeemable, when.

(434) § **10.** Such bonds shall be redeemable at the pleasure of the Territory at any time after the expiration of five years from the date of their issue, and must be redeemed on or before the expiration of ten years from the date of their issue.

Tax Levy to pay interest and principal; duty of auditor and county commissioners

(435) § **11.** For the purpose of paying the principal and annual interest on the bonds so issued, there shall be annually levied upon the taxable property of the Territory, a sum of money sufficient to pay the interest and ten per cent of the principal each year, and it shall be the duty of the auditing officer to certify to each county the amount to be levied in that county for that purpose and when so certified it shall be the duty of the county commissioners to levy the same, and to enter the same on the tax rolls of the county, to be collected as other taxes; said taxes shall be apportioned among the counties in proportion to the assessed value of the property in each. The funds so raised shall be applied to the payment of the interest and principal of the bonds issued on the payment of scrip; but if there be a surplus of money in the Territorial treasury and not otherwise appropriated, the same shall be applied in payment of bonds outstanding.

Territorial scrip.

(436) § **12.** After the passage of this act, it shall be lawful for the Territorial Auditor, Territorial Treasurer and the Governor, and they are herby directed to issue scrip representing the indebtedness of the Territory, to persons to whom the Territory may be indebted. Such scrip shall be in denominations of not less than one nor more than twenty dollars, and it shall be in a form to be approved by such officers and in such design as to reasonably prevent the same from being counterfeited. Each of such bills shall be signed by the Governor and the Territorial auditing officer and bear the impress of the Auditor's seal and be countersigned by the Secretary of the Territory, and when so signed shall be delivered to the Territorial Treasurer in sums of not less than five hundred dollars at one time; and he shall be chargeable therewith as for money received. When Territorial warrants are presented the

Chap. 10. Treasurer may with the consent of the holder of the warrant, receive the warrant, mark it paid and in lieu thereof deliver to the holder of such warrant the amount thereof in the scrip authorized to be issued by this act, or the Treasurer may on the order of the Auditor, pay the same direct to the person. Such scrip shall be payable to the bearer and shall be redeemed by the Territorial Treasurer in cash when he may have funds for that purpose. Such scrip shall be without interest. The Treasurer shall account for all scrip by him issued, by returning to the Territorial auditing officer the amount of Territorial warrants or orders for scrip equal to the amount of scrip by him paid out. When such scrip is once redeemed by the Treasurer it shall not be reissued, but the Territorial auditing officer may deliver to the Treasurer other scrip charging the Treasurer with the amount thereof. In accounting, the Treasurer shall be credited with all scrip by him redeemed and returned to the auditing officer as with cash paid out on behalf of the Territory. When scrip is redeemed the Treasurer shall mutilate the same by writing across the middle of the back of each bill in red ink the word "redeemed" and to whom paid, with the date thereof, and sign his name thereto.

ARTICLE 2.—COUNTY BONDS.

SECTION.
1. County bonds, when lawful to issue.
2. Duty of county commissioners.
3. Form of bond; interest; notice.
4. How signed; proceeding before court.
5. How negotiated.
6. Further issuance, when.
7. For what issued.
8. When redeemable.
9. Tax levy to pay interest and principal; duty of county commissioners.
10. County scrip.

County bonds, when lawful to issue.

(437) § **1.** As soon as there shall be made and filed with the county clerks of the various counties of this Territory, an assessment of the property of the county for the purpose of taxation; it shall be lawful for such county to issue bonds as in this act provided, for the purpose of paying the contingent expenses of the county until such time as revenue may be derived for that purpose by the collection of taxes.

Duty of county commissioners.

(438) § **2.** As soon as the assessments are returned in the various counties, the board of county commissioners shall ascertain the correct amount of claims allowed against the county and incurred in the necessary operation of the county government from its formation up to that time and which remain due and unpaid. The bonds to be issued at that time shall not be in excess of the amount so found.

Form of bond; interest; notice.

(439) § **3.** When thus ascertained the county commissioners and probate judge shall determine the form of bond to be issued on behalf of the county under this act. Each bond shall be in a sum not to exceed one thousand dollars and not less than one hundred dollars and shall bear an annual rate of interest not to exceed six per cent, payable annually. Notice shall be published in at least one newspaper printed at the county seat, stating that on a particular day, naming it, the board of county commissioners and county clerk will proceed before the district court of the county to

make a showing and have the court hear and determine the amount of the county indebtedness, and to sign the bonds to be issued for paying the same, and giving notice that all persons interested may be present at the time the proof is made, and the bonds signed by the judge, stating the amount of the indebtedness as before determined by them, and no bond shall be signed by the judge until such notice shall have been given for at least seven days.

How signed, proceeding before court.

(440) § **4.** The bonds so issued, shall, each and all of them, be signed by the chairman of the board of county commissioners and by the county clerk, and when signed a careful record of the number of each bond and the amount thereof shall be preserved by the county clerk. Thereafter the county clerk and county commissioners or any two of them shall go before the district court of their county and in open court make proof to the satisfaction of the district judge of the existence, the amount, and character of the indebtedness owed by the county for which the bonds are to be issued. On proof being made to the judge of the court of the existence, character and amount of debts, and upon his finding they are of the class and character for which bonds are authorized to be issued, under this act, he shall cause to be made upon the records of the court a statement to that effect, and show the amount, if any, of the indebtedness that he finds existing, and shall then in open court, proceed to sign each bond to be so issued until the amount of the bonds signed by him in the aggregate shall equal the amount of indebtedness so proven, and shall thereupon deliver the same to the county treasurer, who shall then and there receipt to the county clerk for the amount thereof, and be chargeable therefor upon his bond. It is hereby made the duty of the district court to suspend all other business upon the day and during the time the proof, by this section required, is being made and to permit the proof to be made on the day designated by the notice; if not in session the judge shall hold a special term of court on that day for that purpose. In fixing the day on which such proof shall be made, the convenience of the judge shall be consulted by the board of county commissioners.

How negotiated

(441) § **5.** When said bonds are received by the treasurer it shall be his duty, under the direction of the county commissioners and probate judge, to proceed to negotiate the same at not less than par, and the treasurer shall hold the proceeds thereof in his hands and shall apply the same to the payment of county warrants or scrip outstanding; and shall be chargeable with the amount received from said bonds, and credited with the payments made in manner and form as taxes received by him.

Further issuance, when.

(442) § **6.** When the indebtedness of the county incurred in the actual and necessary operating expenses of the county government, shall after the issue of one set of bonds have aggregated the amount of two thousand dollars outstanding, demanded and unpaid, and if county scrip be circulating at a discount greater than ten per cent, it shall be the duty of the county commissioners and county judge to again follow the same method of procedure and issue bonds in that sum for the purpose of raising the money

Chap. 10. with which to liquidate such indebtedness, but in no event shall bonds be issued for any indebtedness incurred except as in the next section provided.

For what issued.

(443) § **7.** The indebtedness for the payment of which bonds may be issued by the county shall consist of rents, payable by the county, fuel, lights, stationery, books, furniture, salaries of officers, travelling expenses, where allowed by law to officers, clerk hire, expenses of the courts chargeable to the county, keeping and guarding prisoners, transporting the same, repairs, and all matters whatsoever pertaining to the necessary and actual operating expenses of the county, and in addition thereto, the expenses of purchasing necessary cells or cages for the confinement of prisoners, not to exceed three thousand dollars to any one county.

When redeemable.

(444) § **8.** Such bond shall be redeemable at the pleasure of the county at any time after the expiration of three years from the date of their issue, and must be redeemed on or before the expiration of ten years from the date of their issue.

Tax levy to pay interest and principal: duty of county commissioners.

(445) § **9.** For the purpose of paying the principal and the annual interest on the bonds so issued, there shall be annually levied upon the taxable property of the county a sum of money sufficient to pay the interest and ten per cent of the principal each year; and it shall be the duty of the county board [board of county commissioners] to levy the same and enter it on the tax rolls of the county to be collected as other taxes, and funds so raised shall be applied to the payment of the interest and principal of the bonds so issued, or to the payment of scrip, but if there be a surplus of money in the county treasury, the same shall be applied in payment of the bonds outstanding.

County scrip.

(446) § **10.** After the passage of this act, it shall be lawful for the board of county commissioners and the county judge, and they are hereby directed to issue scrip representing the indebtedness of the county. Such scrip shall be in denominations of not less than one nor more than ten dollars and shall be in a form to be approved by such officers and in such design as to reasonably prevent the same from being counterfeited, and such scrip shall be receivable for all taxes due the county. Each of such bills shall be signed by the chairman of the board of county commissioners, and by the county clerk, bear the impress of his seal and be countersigned by the probate judge, and when so signed shall be delivered to the county treasurer in sums of not less than two hundred dollars at one time, and he shall be chargeable therewith as for money received. When county warrants are presented, the treasurer may, with the consent of the holder of the warrant, receive the warrant, mark it paid and, in lieu thereof, deliver to the holder of such warrant the amount thereof in the scrip authorized to be issued by this act, or the treasurer may, on order of the county clerk, pay the same direct to the person in whose favor the order is drawn. Such scrip shall be payable to the bearer and shall be redeemed by the county treasurer in cash when he may have funds for that purpose. Such scrip shall be without interest. The treasurer shall account for all scrip by him issued by returning to the county clerk

the amount of county warrants or orders for scrip equal to the amount of scrip by him paid out. When such scrip is once redeemed by the treasurer it shall not be re-issued, but the county clerk may deliver to the treasurer other scrip charging the treasurer with the amount thereof. In accounting, the treasurer shall be credited with all scrip by him redeemed and returned to the auditing officer as with cash paid out on behalf of the county. When scrip is redeemed the treasurer shall cancel each bill by writing across the middle of the back, in red ink, the word "redeemed" and to whom paid with the date and sign his name thereto.

ARTICLE 3.—CITY, TOWN AND VILLAGE BONDS.

SECTION.
1. Cities, towns and villiages; when lawful to issue bonds of.
2. Council to determine amount of indebtedness; form of bond; interest; notice.
3. How signed; proceeding before court.
4. How negotiated.
5. Further issuance, when.
6. For what expenses issued.
7. When redeemable; tax levy to pay principal and interest; duty of council and county commissioners.
8. City, town or village scrip.
9. Warrants may be exchanged for scrip.
10. Amount of scrip not to exceed fifty per cent of indebtedness; penalty for violating this act.
11. Penalty for counterfeiting or attempting to counterfeit scrip, warrants or bonds.

Cities, towns, villages, when lawful to issue bonds of.

(447) § **1.** As soon as there shall be made and filed with the county clerks of the various counties of this Territory an assessment for the purpose of taxation of property within any incorporated city, village or town within this Territory, it shall be lawful for such city, village or town to issue bonds as in this act provided, for the purpose of paying the contingent expenses of the city, village or town until such time as revenue may be derived for that purpose by the collection of taxes.

Council to determine amount of indebtedness, form of bond; interest, notice.

(448) § **2.** As soon as the assessments are so returned, the city, village or town council shall ascertain the correct amount of claims allowed against the city, village or town, and incurred in the necessary operation of the city, village or town government, from the time of its formation under the Statutes of Nebraska, extended over this Territory, up to the time the estimate is made; but in making such computation no debt or liability of any character whatsoever, arising from and by reason of, the existence of any provisional city, village or town governments within the Territory prior to the time that the cities were organized under the Nebraska Statutes as aforesaid. The bonds to be issued shall not be in excess of the amount so ascertained. When thus ascertained the city, village or town council and probate judge of the county shall determine the form of bond to be issued on behalf of the city, village or town under this act. Each bond shall be in a sum not to exceed one thousand dollars nor less than one hundred dollars, and shall bear an annual rate of interest not to exceed six per cent, payable semi-annually. Notice shall be published in two newspapers printed in the county, stating that on a particular day, naming it, the city, village or town council

Chap. 10. and probate judge will proceed before the district court of the county to make a showing, and have the court hear and determine the amount of the city, village or town indebtedness, and to sign the bonds to be issued for paying the same, and giving notice that all persons interested may be present at the time the proof is made and the bonds signed by the judge stating the amount of the indebtedness as before determined by them, and no bond shall be signed by the judge until such notice shall have been given for at least seven days.

How signed, proceeding before court.

(449) § **3.** The bonds so issued shall, each and all of them, be signed by the mayor of the city, village or town and by the city clerk in the presence of the council, and when so signed a careful record of the number of each bond and the amount thereof shall be preserved by the city clerk and a transcript thereof filed in the office of the county clerk, who shall receive and retain the same in his office. Thereafter a quorum of the city, village or town council and the city clerk, shall go before the district court of their county and in open court make proof to the satisfaction of the district judge of the existence and amount and character of the indebtedness of the city, village or town for which the bonds are to be issued. On proof being made to the judge of the court of the existence, character and amount of debts, and upon his finding they are of the class and character for which bonds are authorized to be issued under this act, he shall cause to be made upon the records of the court a statement to that effect, and show the amount, if any, of the indebtedness that he finds existing, and shall then in open court proceed to sign each bond to be so issued until the amount of the bonds signed by him in the aggregate shall equal the amount of the indebtedness so proven, and shall thereupon deliver the same to the city, village or town treasurer who shall then and there receipt to the county clerk and to the city, town or village clerk for the amount thereof, and be chargeable therefor upon his bond, and shall hold such bonds as the property of the city, town or village issuing the same. It is hereby made the duty of the district court to suspend all other business, except the proof of other bonds, upon the day and during the time the proof, by this section required, is being made and to permit the proof to be made on the day designated in the notice; if the court be not in session the judge shall hold a special term of court on that day for that purpose. In fixing the day on which such proof shall be made, the convenience of the judge shall be consulted. by the city, town or village council.

How negotiated.

(450) § **4.** When said bonds are received by the county treasurer it shall be his duty under the direction of the city, town or village council, and the probate judge, to proceed to negotiate the same at not less than par, and the county treasurer shall hold the proceeds thereof in his hands, as a special fund belonging to the city, town or village by which the bonds were issued, and shall apply the proceeds thereof to the payment of city warrants and scrip outstanding; and shall be chargeable with the amounts received from said bonds and credited with the payments made

in manner and form as for taxes received by him on behalf of the city, town or village.

Further issuance, when.

(451) § **5.** When the indebtedness of the city, town or village, incurred in the actual and necessary operating expenses of the city, town or village shall after the issue of one set of bonds, have aggregated the amount of one thousand dollars outstanding, demanded and unpaid, and if city scrip be circulating at a discount greater than ten per cent, it shall be the duty of the city, town or village council and probate judge to again follow the same method of procedure and issue bonds in that sum for the purpose of raising the money with which to liquidate such indebtedness, but in no event shall bonds be issued for any indebtedness incurred except as in the next section provided.

For what expenses issued.

(452) § **6.** The indebtedness for the payment of which bonds may be issued shall consist of rent, payable by the city, town, or village, fuel, lights, stationery, books, furniture, salaries of officers, policemen, travelling expenses, where allowed by law to the officers, clerk hire, expenses of city courts, keeping and guarding prisoners, repairs, and all matters whatsoever pertaining to the actual and necessary operating expenses of the city, town or village, but under this section no indebtedness incurred for sewerage, grading of streets or erection of public works shall be included. Neither shall any indebtedness in any shape, case or form, nor in any manner whatever be estimated or allowed, for or on behalf of any property received, any act done, or liability incurred by any provisional village, town or city government existing before the organization of the villages, towns or cities of this Territory under the statutes of Nebraska extended over this Territory by the Organic Act thereof, but the cities, towns and villages are authorized to contract for the keeping of prisoners in the county jail, or they may erect a city prison, costing not more than one thousand dollars, and the cost thereof may be estimated as a part of the operating expenses of the city, town or village government. They may also open streets, or straighten or widen the same, not to exceed two hundred feet wide, and buy lots so to do, and the expense of so doing shall be estimated as city expenses for which bonds or scrip may be issued.

When redeemable, tax levy to pay principal and interest, duty of city council; county commissioners.

(453) § **7.** Such bond shall be redeemable at the pleasure of the city, town or village at any time after the expiration of three years from the date of their issue, and must be redeemed on or before the expiration of ten years from the date of their issue. For the purpose of paying the principal and annual interest on the bonds so issued there shall be annually levied upon the taxable property of the city, town or village a sum of money sufficient to pay the interest and ten per cent of the principal each year, and it shall be the duty of the city, town or village council to certify to the county commissioners the amount of money requisite for that purpose and the county commissioners shall thereupon levy the same and enter it on the tax rolls of the county to be collected as other taxes; and funds so raised shall be applied to the payment of the interest and principal of the bonds so isued, or to the payment of scrip; but if there be a surplus of money

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belonging to the city, town or village in the county treasury the same shall be applied in the payment of the bonds outstanding.

City, town or village scrip

(454) § **8.** After the passage of this act it shall be lawful for the city, town or village council and the probate judge to issue scrip, (representing the indebtedness of the city) such scrip shall be in denominations of not less than one, nor more than ten dollars and shall be in a form to be approved by the council and probate judge, and in such design as to reasonably prevent the same from being counterfeited. Each of such bills shall be signed by the mayor of the city, town or village, and by the city clerk, bear the impress of his seal, and be countersigned by the probate judge in the presence of the county clerk and county treasurer; and when so signed shall be delivered to the county treasurer in sums of not less than two hundred dollars at any one time, and not in excess of the sum of one thousand dollars, and the treasurer shall be chargeable therewith, as for money received belonging to the city, town or village, and the county clerk shall charge him with the amount thereof as the debt of said city town or village. When city warrants are presented the county treasurer may, with the consent of the holder of the warrant, receive the warrant, mark it paid, and in lieu thereof deliver to the holder of such warrant, the amount thereof in the city scrip authorized to be issued by this section. But the treasurer may, on orders signed by the mayor and the city clerk, and countersigned by the county clerk, pay such order in scrip to the person in whose favor such order was drawn. Such scrip shall be payable to the bearer and shall be redeemed by the county treasurer in cash, when he may have funds belonging to the city in his hands for that purpose. Such scrip shall be without interest. The treasurer shall account for all scrip by him paid out, by returning to the county clerk and the county clerk to the city clerk, the amount of city warrants or city orders for scrip equal to the amount by the treasurer paid out. When such scrip is once redeemed by the treasurer it shall not be re-issued, but shall be by the treasurer mutilated by writing in red ink across the center of the back thereof, the word "redeemed" and to whom paid, giving the date thereof, and by signing his name thereto, but the county clerk may deliver to the treasurer other scrip issued as before provided, and charge the treasurer with the amount thereof; in accounting, the treasurer shall be credited with all scrip by him redeemed and returned to the county clerk, as with cash paid out on behalf of the city on warrants; the county clerk shall return the scrip so redeemed to the city clerk, after crediting the treasurer with the amount there of as warrants paid out and he shall in the presence of the council destroy the same.

Warrants may be exchanged for scrip

(455) § **9.** In any case where the claim has been duly allowed, against the Territory or against the county, or against a city, town or village, the officer authorized by law to draw warrants, therefor upon the treasury, may issue to the party in whose favor the claim is allowed, an order upon the treasurer for the amount of scrip of the Territory, county, city, town or village, as the case may be,

and deliver the order to the claimant in lieu of a warrant and it shall be the duty of the treasurer to receive such order and pay the amount thereof in scrip to the party presenting the same and he shall then return such order to the Territorial auditing officer or the county clerk or the city clerk, as the case may be, and receive credit therefor as upon a warrant paid and returned. It shall be the duty of the auditing officer, county or city clerk, when there is scrip in the hands of the treasurer to offer such order in preference to the issuance of a warrant, but no such order shall be issued unles there be at that time scrip in the hands of the treasurer with which to redeem it.

Amount of scrip not to exceed fifty per cent of indebtedness, penalty for violation of this act.

(456) § **10.** In no case shall the Territory or any county or any city, town or village issue under the provisions of this act, scrip in excess of fifty per cent of their indebtedness at the time it is issued. The Territorial Treasurer and the county treasurers shall be required to produce all Territorial, county or city scrip in their hands as treasurers, in the same manner they are required to produce and count money on hand. If any treasurer shall embezzle, misapply, or improperly use any of said scrip he shall be criminally liable to the same extent and though they [he] had in like manner used money in his care and custody as a public officer. If any Territorial, county, city, town or village officer or officers shall issue scrip or put the same in circulation or use the same in any manner other than in this act provided, or shall certify or account any indebtedness as existing when in truth and fact it does not exist or shall make any false proof or false record in relation to any matter provided for in this act, they [he] shall be deemed guilty of a felony, and on conviction shall be imprisoned in the penitentiary not less than one or more than ten years at the discretion of the court.

Penalty for counterfeiting or attempting the same.

(457) § **11.** Any person or persons counterfeiting, or imitating or attempting to imitate any of the forms of scrip, warrants or bonds authorized to be issued under the provisions of this act, shall, upon conviction thereof, by any court of competent jurisdiction, be adjudged guilty of a felony and shall be imprisoned in the penitentiary for a term of not less than five nor more than twenty years.

This act shall be in force from and after its passage and approval.

CHAPTER XI.—BOUNTIES.

AN ACT to provide for the payment of bounties for the destruction of wild animals.

[Took effect December 25, 1890.]

SECTION.		SECTION.	
1.	Amount of bounty.	4.	Blanks.
2.	Applicant required to.	5.	County clerk's fees.
3.	Clerk's and commissioners' duties.	6.	Killing of dogs.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Amount bounty.

(458) § **1.** The county commissioners of each county in this Territory may in their discretion offer a bounty not to exceed

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three dollars for each and every grey wolf, and one dollar for each and every coyote killed within the limits of their county.

Applicant required to

(459) § **2.** Before payment of said bounty the applicant therefor must subscribe and make oath before the county clerk of the county in which the animal was killed, setting forth that the animal was killed within said county, giving the date thereof and by whom, and that the scalp which is produced is the scalp of such animal, and that no allowance or bounty has been received or paid for the killing of such animal: *Provided*, No claim shall be allowed unless the applicant exhibit and furnish to such county clerk at the time of making such affidavit, the scalp of the animal killed, which shall embrace both ears.

Clerk's and commissioner's duties

(460) § **3.** The county clerk shall retain such affidavit and such scalps until the next regular meeting of the board of county commissioners they [who] shall count the scalps and burn them, and the board shall audit the claim and order a warrant drawn upon the county treasurer for the bounty in favor of the party killing said animal.

Blanks

(461) § **4.** The county commissioners are hereby authorized to furnish all blanks and make all needful regulations for the carrying out of this act.

County clerk's fees.

(462) § **5.** The county clerk shall be entitled to a fee of twenty-five cents for each affidavit to be paid by the county.

Killing of dogs

(463) § **6.** It shall be lawful for any person to kill any dog off of the premises of the owner of such dog found chasing or worrying sheep.

This act shall be in force and effect on and after the adjournment of the present session of the Legislative Assembly.

CHAPTER XII.—CARRIAGE.

ARTICLE.		ARTICLE.	
1.	Carriage in general.	4.	Carriage of messages.
2.	Carriage of persons.	5.	Common carriers.
3.	Carriage of property.		

ARTICLE 1.—CARRIAGE IN GENERAL.

SECTION.		SECTION.	
1.	Contract for carriage.	4.	Carrier by sea.
2.	Inland or marine.	5.	Gratuitous carriers.
3.	Classes defined.	6.	Same.—Must complete duty.

Contract for carriage.

(464) § **1.** The contract of carriage is a contract for the conveyance of property, persons or messages, from one place to another.

Carriage either inland or marine.

(465) § **2.** Carriage is either.

First. Inland; or,

Second. Marine.

Classes defined.

(466) § **3.** Carriers upon the ocean, upon arms of the sea, upon the great lakes, or such other navigable waters or rivers as are within the admiralty jurisdiction of the United States, are marine carriers. All others are inland carriers.

Carriers by sea.

(467) § **4.** Rights and duties peculiar to carriers by sea are defined by acts of Congress.

Gratuitous carriers.

(468) § **5.** Carriers without reward are subject to the same rules as employes without reward, except so far as otherwise provided by this title.

Same—Must complete his duty.

(469) § **6.** A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

ARTICLE 2.—CARRIAGE OF PERSONS.

SECTION.
1. Ordinary care.
2. Utmost care.
3. Must use safe vehicles.
4. Must not overload vehicles.
5. Treatment of passengers.
6. Speed and delays.

Carriers of persons must use ordinary care.

(470) § **1.** A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

Carrier for reward must use utmost care.

(471) § **2.** A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

Must use safe vehicles.

(472) § **3.** A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

Must not overload his vehicles.

(473) § **4.** A carrier of persons for reward must not overcrowd or overload his vehicle.

Treatment of passengers.

(474) § **5.** A carrier of persons for reward must give to passengers all such accomodations as are usual and reasonable, must treat them with civility, and give them a reasonable degree of attention.

Speed and delays

(475) § **6.** A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

ARTICLE 3.—CARRIAGE OF PROPERTY.

SECTION.
1. Freight; consignor; consignee.
2. Ordinary care.
3. Must obey directions.
4 Conflicting directions.
5. Storage of freight.
6. Manner of delivery.
7. Place of delivery.
8. Notice to consignee.
19 May terminate liability
10. Unclaimed property.
11. Perishable property.
12. Hotel keepers.
13. Bill of lading defined.
14. Bill of lading negotiable.
15. By delivery.
16. Rights and obligations of carrier.
17. Sets of bills to consignor.
18. Delivery according to bill.
19. Surrender of bill of lading.
20. Freightage due, when.
21. Consignor presumed to be liable.
22. Consignee liable, when.
23. Natural increase.
24. Apportionment of freight.
25. Acceptance of part.
26. Apportionment by distance.
27 Extra carriage.
28. Lien for freightage.
29. Jettison and general average.
30. Jettison begins with what.
31. Master of ship may order.
32. Loss proportioned.
33. Ratio of adjustment.
34. Value determined.
35. Deck stowage.
36. Rules applicable to sacrifice of property.

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Freight defined—Consignor defined.

(476) § **1.** Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor, and the person to whom it is to be delivered is called the consignee.

Carrier of property for reward must use ordinary care

(477) § **2.** A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

Must obey directions

(478) § **3.** A carrier must comply with the directions of the consignor or consignee, to the same extent that an employe is bound to comply with those of his employer.

When directions are conflicting.

(479) § **4.** When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee, inconsistent with his own.

Storage of freight by marine carrier—Deviation from course

(480) § **5.** A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

Manner of delivery.

(481) § **6.** A carrier of property must deliver it to the consignee, at the place to which it is addressed in the manner usual at that place.

Place of delivery.

(482) § **7.** If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

First. If carried upon a railway owned and managed by the carrier, it may be delivered at the station nearest the place to which it is addressed.

Second. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or if there is no wharf, on board a lighter alongside the ship; or,

Third. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

Notice to consignee.

(483) § **8.** If, for any reason, a carrier does not deliver freight to the consignee or his agent, personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest postoffice.

May terminate liability

(484) § **9.** If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him.

Sale of unclaimed property may be made, when.

(485) § **10.** Whenever any trunk, carpet-bag, valise, bundle, package or article of property transported or coming into the pos-

session of any railroad, or express company, or any other common carrier in the course of his or its business as common carrier, shall remain unclaimed and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed, and the owner or person to whom the same is consigned cannot be found upon diligent inquiry, or being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier to sell such article at public auction, after giving the owner or consignee fifteen days' notice of time and place of sale, through the postoffice and by advertising in a newspaper published in the county where such sale is made, and out of the proceeds of such sale to pay all legal charges on such articles, and the amount over, if any, shall be paid to the owner or consignee upon demand.

Sale of perishable property.

(486) § **11.** Perishable property which has been transported to destination, and the owner or consignee notified of its arrival, on being notified, refuses or neglects to receive the same, and pay the legal charges thereon; or if upon diligent inquiry the consignee cannot be found, such carrier may, in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds, after deducting the freight and charges and expenses of sale, shall be paid to the owner or consignee upon demand.

Act applies to hotel keepers.

(487) § **12.** The provisions of this act shall apply to hotel keepers and warehousemen.

Bill of lading defined.

(488) § **13.** A bill of lading is an instrument in writing signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

Bill of lading is negotiable.

(489) § **14.** All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof, in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

Negotiable by delivery, when.

(490) § **15.** When a bill of lading is made to bearer, or in equivalent terms, a simple transfer thereof by delivery conveys the same title as an indorsement.

Bill of lading does not alter rights or obligations of carrier.

(491) § **16.** A bill of lading does not alter the rights or obligation of the carrier, as defined in this chapter, unless it is plainly inconsistent therewith.

Sets of bills to consignor.

(492) § **17.** A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him besides all damages thereby occasioned.

Delivery according to bill.

(493) § **18.** A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of

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lading therefor, properly indorsed, or made in favor of the bearer.

Surrender of bill of lading

(494) § **19.** When a carrier has given a bill of lading or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight.

Freightage, due when

(495) § **20.** A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

Consignor is presumed to be liable

(496) § **21.** The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

Consignee is liable, when

(497) § **22.** The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

Natural increase

(498) § **23.** No freightage can be charged upon the natural increase of freight.

Apportionment of freightage.

(499) § **24.** If freightage is apportioned by a bill of lading, or other contract made between a consignor and carrier, the carrier is entitled to payment according to the apportionment for so much as he delivers.

Acceptance of part of freight

(500) § **25.** If a part of the freight is accepted by a consignee without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

According to distance

(501) § **26.** If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

Extra carriage.

(502) § **27.** If freight is carried further, or more expeditiously than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it on the demand of the consignee, at the place and time of its arrival.

Lien for freightage

(503) § **28.** A carrier has a lien for freightage, which is regulated by the chapter on liens.

Jettison and general average.

(504) § **29.** A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice, any or all of the cargo or appurtenances of the ship Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

Jettison begins with what

(505) § **30.** A jettison must begin with the most bulky and least valuable articles, so far as possible.

Master of ship can order jettison.

(506) § **31.** A jettison can be made only by authority of the master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person.

(507) § **32.** The loss incurred by a jettison, when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage, and cargo, for the benefit of which the sacrifice was made, as well as by the owner of the thing sacrificed. Loss proportioned.

(508) § **33.** The proportions in which a general average loss is to be borne must be ascertained by an adjustment in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid there, is valid everywhere. Ratio of adjustment

(509) § **34.** In estimating values for the purpose of a general average the ship and oppurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution. Values determined, how.

(510) § **35.** The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage. Deck Stowage.

(511) § **36.** The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship, or expense necessarily incurred for the preservation of the ship and cargo from extraordinary perils. Rules applicable to any sacrifice of property.

ARTICLE 4.—CARRIGE OF MESSAGES.

SECTION.
1. Carrier of messages.
2. Must use care.

(512) § **1.** A carrier of messages for reward must deliver them at any place to which they are addressed, or to the persons for whom they are intended. Carrier of messages.

(513) § **2.** A carrier of messages for reward must use great care and dilligence in the transmission and delivery of messages. A carrier by telegraph must use the utmost diligence therein. He must use care.

ARTICLE 5.—COMMON CARRIERS.

SECTION.
1. Common carriers defined.
2. Must accept all freight.
3. Preference to government.
4. Where and when to start.
5. Compensation.
6. Obligations limited, how.
7. Void agreements.
8. Construction of contract.
9. Must carry luggage.
10. Luggage defined.
11. Liability for luggage.
12. Carriage and delivery.
13. Must provide vehicles.
14. Seats for passengers.
15. Carrier may make rules.
16. Fare, when payable.
17. Ejection of passenger.
18. Lien on luggage.
19. Inland carrier's liability.
20. When not exempt.
21. Liability for delay.
22. Marine carrier's liability.
23. Perils of the sea.
24. Valuables must be declared.
25. Accepting freight beyond usual route.
26. Proof of loss of freight.
27. Other services.
28. Order of transmission.
29. Other than telegraph messages.
30. Damages.

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Common carrier defined.

(514) § **1.** Every one who offers to the public to carry persons, property or messages, is a common carrier of whatever he thus offers to carry.

Must accept all freight

(515) § **2.** A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

Preference given to government of United States and the Territory.

(516) § **3.** A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this Territory.

Must start, where and when

(517) § **4.** A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel.

Compensation

(518) § **5.** A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

Obligations, how limited

(519) § **6.** The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

Void agreements

(520) § **7.** A common carrier cannot be exonerated by any agreement made in anticipation thereof, from liability for the gross negligence, fraud or wilful wrong, of himself or his servants.

Construction of contract.

(521) § **8.** A passenger, consignor or consignee, by accepting a ticket, bill of lading or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can only be manifested by his signature to the same.

Carrier of persons must carry luggage.

(522) § **9.** A common carrier of persons, unless his vehicle is fitted for the reception of passengers exclusively, must receive and carry a reasonable amount of luggage for each passenger, without any charge except for an excess of weight over one hundred pounds to a passenger.

Luggage defined

(523) § **10.** Luggage may consist of any articles intended for the use of a passenger while travelling, or for his personal equipment.

Liability for luggage

(524) § **11.** The liability of a carrier, for luggage received by him with a passenger, is the same as that of a common carrier of property.

Carriage and delivery of luggage

(525) § **12.** A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belongs; except that where luggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported, it is carried at their risk.

Must provide vehicles.

(526) § **13.** A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers

who can be reasonably expected to require carriage at any one time.

Seats for passengers.

(527) § **14.** A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

Carrrier m a y make rules.

(528) § **15.** A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

Fare, when payable.

(529) § **16.** A common carrier may demand the fare of passengers either at starting or at any subsequent time.

Ejection of passengers.

(530) § **17.** A passenger who refuses to pay his fare, or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place, or near some dwelling house. After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

Lien on luggage.

(531) § **18.** A common carrier has a lien upon the luggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the chapter on liens.

Liability of inland carrier.

(532) § **19.** Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections 3848 to 3851, for the loss or injury thereof from any cause whatever, except:

First. An inherent defect, vice or weakness, or a spontaneous action, of the property itself.

Second. The act of a public enemy of the United States, or of this Territory.

Third. The act of the law; or,

Fourth. Any irresistible superhuman cause.

[Sections 3848 to 3851—

SECTION 3848. A carrier of property must deliver it to the consignee, at the place to which it is addressed in the manner usual at that place.

SECTION 3849. If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

First. If carried upon a railway owned and managed by the carrier, it may be delivered at the station nearest the place to which it is addressed.

Second. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or if there is no wharf, on board a lighter alongside the ship; or,

Third. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence be found.

SEC. 3850. If, for any reason, a carrier does not deliver freight to the consignee or his agent, personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a

reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post office.

SEC. 3851. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him.—Dakota code.]

When not exempt

(533) § **20.** A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

Liability for delays.

(534) § **21.** A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

Marine carrier's liability.

(535) § **22.** A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire. The liability of a common carrier by sea is further regulated by acts of congress.

Perils of the sea.

(536) § **23.** Perils of the sea are from:

First. Storms and waves.

Second. Rocks, shoals and rapids.

Third. Other obstacles, though of human origin.

Fourth. Changes of climate.

Fifth. The confinement necessary at sea.

Sixth. Animals peculiar to the sea; and,

Seventh. All other dangers peculiar to the sea.

Valuables must be declared.

(537) § **24.** A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state, or time-pieces of any description, of negotiable paper or other valuable writings, of pictures, glass or china ware, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight.

Accepting freight beyond the usual route.

(538) § **25.** If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier, carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

Proof of loss of freight shipped beyond usual route

(539) § **26.** If freight, addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

Other services

(540) § **27.** In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the chapters on deposit and service.

Order telegraph messages must be transmitted.

(541) § **28.** A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages ac

cumulate upon his hands, he must transmit them in the following order: Chap. 13.

First. Messages from public agents of the United States, or of this Territory, on public business.

Second. Messages intended in good faith for immediate publication in newspapers, and not for any secret use.

Third. Messages giving information relating to the sickness or death of any person.

Fourth. Other messages, in the order in which they were received.

Other than telegraph.

(542) § **29.** A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this Territory, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received.

Damages.

(543) § **30.** Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

CHAPTER XIII.—CENSUS.

AN ACT providing for the taking of census.

[Took effect December 25, 1890.]

SECTION.
1. Assessors to take census and statistics.
2. Blanks and instructions.
3. Schedules, what to contain.
4. Assessors' duties.
5. Time when census shall be taken; certificate of officer; county clerk's duty.
6. Auditor to provide blanks and instructions for clerks
7. No extra pay allowed assessors.
8. Penalty for assessors neglecting to take census.
9. Governor to appoint census takers in unorganized counties.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Assessors to take census and statistics.

(544) § **1.** The township and city assessors in addition to their duties as such assessors prescribed by law shall make an enumeration of all persons residing in their respective townships and cities, omitting from the enumeration Indians not taxed, or belonging to any tribe or holding tribal relations, and to collect other statistical information within their respective townships and cities in the manner provided for in this act.

Blanks and instructions.

(545) § **2.** The Territorial Auditor shall furnish to each county clerk for the assessors, such blanks and statistical rolls in duplicate, and printed instructions to such assessors as may be necessary to take the enumeration of the inhabitants, and to make complete returns of statistical information provided for in this act.

Schedules, what to contain.

(546) § **3.** The instructions mentioned in the last preceding section shall require schedules properly classified and among other things shall contain the following:

First. The name, age and sex of each person, place of birth and where from to Oklahoma, number of families, and number of persons in each family.

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Second. Population ten years of age and over engaged in all occupations; engaged in agriculture; professional services; trade and transportation; manufactures and mechanical industries; mining apprentice; native and foreign under twenty-one years of age.

Third. Name of person managing farm; size of farm; quantity of land under cultivation; quantity of land under fence; quantity of land not under fence; acreage of the principal crops; number of rods of the different kinds of fence; and the cost of each; value of farm; value of farming implements; number of the different kinds of stock.

Fourth. Number of establishments; name and post office address of corporation, company or individual producing; name of business; kind of motive power; average number of hands employed; capital invested; raw material used; and product.

Fifth. The number of blind, deaf and dumb; insane and idiotic; giving age, sex and color of each, together with name and post office address of the parents or guardians.

Sixth. Number of newspapers, when established, name, and number of circulation; number of church organizations of each denomination, membership; number of church houses and value of church property; number of school houses and value of school property.

Seventh. The number of honorably discharged volunteer union soldiers showing State or Territory in which enlisted, term of service; and number of command to which attached, also in what prison and length of time confined, if a prisoner of war.

Assessor's duties.

(547) § **4.** Each assessor shall perform the service required of him by a personal visit to each dwelling house and to each house in his township or city and shall ascertain by inquiries made of some member of each family if any one can be found capable of giving the information, but if not then of the agents of such family and if the agent of the family cannot be found, then he shall obtain the information from the most reliable source, the name of each member, the age and place of birth of each, and all other particulars specified in this act, in accordance with the blanks furnished by the Territorial Auditor . And [he] shall also visit personally the farms, mills, shops, mines and other places respecting which information is required as before specified in his district, and shall obtain all such information from the best and most reliable sources. The memoranda so taken shall be read to the person or persons furnishing the facts, to correct errors and supply omissions, if any shall exist.

Time when census shall be taken, certificate of officer, county clerk's duty.

(548) § **5.** The enumeration of inhabitants and all other statistics required to be taken by the assessors and returned to the county clerks according to subdivisions one, two, six and seven of section three of this act, shall be taken in the year eighteen hundred and ninety-two, and every two years thereafter, and the statistics required to be taken according to subdivisions three, four and five of section three of this act shall be taken by the assessors in the year one thousand eight hundred and ninety-one, and annually thereafter. Their accuracy shall be verified by the affidavit

of the assessor taking the same and returned and delivered to the county clerk at the time and with the returns of the valuation of the property; the county clerks on receiving such returns of enumeration and other statistical report shall copy the same on blanks furnished by the Territorial Auditor, make the proper aggregate footings, certify to the accuracy of such copy and footings and transmit the same to the Territorial Auditor within thirty days thereafter.

Auditor to provide blanks and instructions for clerks.

(549) § **6.** The Territorial Auditor is hereby required to carry into effect the provisions of this act relating to the census and industrial statistics and to provide blanks and distribute the same to the county clerk who shall deliver them to the assessor so that the enumeration may commence on the first Monday in February and be taken with reference to that day, in each and every county, and to prepare and distribute at the same time printed instructions defining and explaining the duties of the assessors in collecting the statistics required by this act. When the returns of such statistics are made, said Territorial Auditor shall cause the same to be classified and arranged in the best and most convenient manner for use, and [lay] the same before the Legislative Assembly at the next session thereof; and the expenses incurred by the Territorial Auditor in carrying out the provisions of this act in relation to the printing of blanks and instructions for the use of the assessors, shall be payable out of the Territorial treasury, upon presentation to the Treasurer thereof by the said Auditor of an itemized account of such expense verified by his affidavit.

No extra pay allowed assessors.

(550) § **7.** The services herein required to be performed by the several assessors in this Territory shall be performed at the same time that he performs his services under the general assessment laws of the Territory and in connection therewith, and shall not be allowed pay for such services separately, but for the time employed in taking the census herein provided for and taking the general assessment as for one and the same service.

Penalty for assessors neglecting to take census.

(551) § **8.** Any assessor who shall wilfully neglect or refuse in whole or in part to perform the duties required in this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty dollars, nor more than one hundred dollars.

Governor to appoint census takers in unorganized counties.

(552) § **9.** It shall be the duty of the Governor to appoint in each unorganized and unattached county of the Territory one or more competent persons as census takers, whose duty it shall be to take the enumeration of inhabitants and collect all other statistics required to be taken by township and city assessors, according to subdivisions one, and two of section three of this act, and to return the same under oath to the Territorial Auditor on or before the first day of September next ensuing. Before entering upon the duties of his office, each census taker shall take and subscribe an oath to faithfully and honestly discharge the duties required of him by this act, and shall receive for the services herein required the same compensation allowed by law to township and city assessors for like services, payable out of the Territorial treas-

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ury upon presentation to the Territorial Auditor an itemized account of services rendered, verified by his affidavit.

This act shall take effect and be in force from and after the adjournment of the first session of this Legislative Assembly.

CHAPTER XIV.—CITY INDEBTEDNESS.

ARTICLE.
1. Guthrie, East Guthrie, West Guthrie and Capitol Hill

ARTICLE.
2. Kingfisher (formerly Lisbon.)

AN ACT for the purpose of Providing for the Allowance and Payment of the Indebtedness heretofore created by the people and cities of Guthrie, East Guthrie, West Guthrie and Capitol Hill, now consolidated into the village of Guthrie.

[Took effect December 25, 1890]

ARTICLE 1.—GUTHRIE, EAST GUTHRIE, WEST GUTHRIE AND CAPITOL HILL.

SECTION.
1. District judge to appoint three commissioners.
2. Claims must be presented under oath.

SECTION.
3. Commission to keep record.
4. Report of commission to district judge.
5. Compensation of commissioners.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

District judge to appoint three commissioners

(553) § **1.** That the district judge of Logan county is hereby empowered to appoint three disinterested persons to act as a commission or referees to inquire into and pass upon all claims and demands of every character heretofore issued by the city governments mentioned in the caption of this act, for all purposes.

Claims must be presented under oath.

(554) § **2.** That the owners and holders of any kind of scrip, warrants or other evidence of indebtedness heretofore issued by the city governments of Guthrie, East Guthrie, West Guthrie and Capitol Hill, shall present their claims to the commissioners or referees, to be appointed by the district judge, under oath, stating that the same is a *bona fide* claim, that they performed the labor or advanced the money or furnished the materials or purchased same for a valuable consideration, and that they believe the city, issuing the same did so for necessary expenses incurred in running the city government, and said master shall hear further evidence if he deem necessary before allowing the same.

Commission to keep record.

(555) § **3.** The commission or referees shall keep a record of all claims filed with them for allowance and keep their office open during the hours of nine o'clock in the morning and four o'clock p. m , and shall be allowed sixty days to hear and determine all claims, or longer if the district judge so orders. Said commission or referees shall immediately after this appointment extend ten days notice in some newspaper published in the village of Guthrie, notifying all parties holding or owning any claims mentioned in this act to present the same to them for allowance; and all persons who fail to present their claims within thirty days from date of

first publication mentioned in this section shall be forever precluded from so doing hereafter.

Report of commission to district judge.

(556) § **4.** That after the commission or referees shall have passed upon and allowed any and all claims mentioned in this act, they shall make a report to the district court of same showing the names and amounts allowed by them, and also all claims and the names of persons and amounts disallowed by them, for approval or disapproval of the district judge. And all claims allowed and approved by the district judge shall be certified to the mayor and council of the village of Guthrie, who are hereby authorized and directed to issue warrants upon the village and payable by the villages to the holders and owners, payable in installments each of the amounts to be in one, two, three, four and five years to bear interest at the rate of six per cent per annum from the date of the allowance by the commission or referees, and said mayor and council of the village of Guthrie shall levy a tax upon the property of the residents of said village to pay the warrants herein referred to, levying same upon each subdivision heretofore constituting Guthrie, East Guthrie, West Guthrie and Capitol Hill according to the amount of indebtedness created by the city councils, the mayors and school boards, heretofore acting for and in behalf of the people resident of said cities. Each of said cities to be liable for and taxable under this act for the amount of indebtedness created by them.

Compensation of commissioners.

(557) § **5.** That said commission or referee shall be allowed such compensation as the district judge may allow them for the services to be performed by them under this act, and the village of Guthrie shall pay the same to the said commission or referees upon the order of the district judge.

That this act take effect and be in force from and after its passage and approval.

ARTICLE 2—KINGFISHER, (FORMERLY LISBON.)

SECTION.		SECTION.	
1.	Indebtedness audited.	4	Limitation of payment.
2.	Realty tax legalized.	5.	Accounts examined.
3.	Occupation tax legalized.		

AN ACT to provide for the ratification and confirmation and payment of indebtedness of the village of Kingfisher City (formerly Lisbon.)

[Took effect December 23, 1890]

PREAMBLE.

WHEREAS: The village of Kingfisher City (formerly Lisbon) through its proper officers duly elected by the inhabitants thereof, under the provisional city government between the dates of April the twenty-second, one thousand eight hundred and eighty-nine, and the second day of July, one thousand eight hundred and ninety, the latter date being the date of the incorporation of the said village of Kingfisher City (formerly Lisbon) under the laws governing Oklahoma Territory, for the organization of villages and cities under the Nebraska laws, in the exercise of its provisional authority

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for and on behalf of, and for the benefit of the inhabitants thereof, did create and assume certain obligations of which there remains unpaid the sum of about three thousand and seventy-four ($3,074.00) dollars, and at the same time made provisions for the payment of the obligation by taxation upon lots, and so forth, but owing to the failure of a portion of the property and persons to pay their respective shares of the assessments, the above amount remains unpaid as herein mentioned, and whereas it is necessary to the proper adjustment and payment of this indebtedness created and incurred by the provisional city government of the village of Kingfisher City (formerly Lisbon) for the benefit of the inhabitants thereof, and the collection of certain assessments and taxes made against and levied upon the occupants and property of the inhabitants of said village of Kingfisher City (formerly Lisbon) while under the said provisional government that additional legislation be had. Therefore;

Indebtedne s s audited.

(558) § **1.** Be it enacted by the Legislative Assembly of the Territory of Oklahoma, the duly appointed, qualified and acting chairman and board of trustees of the village of Kingfisher City, or a legal quorum thereof, are hereby empowered and authorized as soon as practicable to audit all of the outstanding indebtedness created by the said provisional government, and when they deem it just therein to issue in lieu of the scrip, warrants or other evidence of its indebtedness given by said provisional government, the warrants of the village of Kingfisher City under the requirements and restrictions of the law now regulating the action of the trustees of villages.

Realty tax legalized

(559) § **2.** The ordinance passed and approved by said provisional government "providing for the levy and collection of a tax of one half of one per cent on the real estate of Lisbon, Indian Territory, for the present year ending December 31, 1889," and the levy made and approved January 6th, 1890, are hereby directed to be legal and to be in full force and effect, and the unpaid assessments made under said ordinance are hereby made and declared to be a lien upon the property on which the same was levied, and will be collected in the manner that unpaid city taxes are collected.

Occupation tax legalized.

(560) § **3.** That ordinance "providing for the levying and collecting of an occupation tax on trade and business in the city of Lisbon, Oklahoma Territory," passed and approved by said provisional government, August the ninth, one thousand eight hundred and eighty nine, is hereby declared legal and to be in full force and effect, and any unpaid part of said license tax is hereby declared to be and is made a lien against any real property owned by any person, persons or firms who have failed to pay said tax, and will be collected in the same manner as unpaid city taxes are collected. Said village of Kingfisher City is located and situated on the south half of section fifteen, township sixteen, north of range seven, west of the Indian Meridian.

This act shall be in force and effect from and after its passage and approval.

AN ACT amendatory to an act entitled "An Act to provide for the ratification, confirmation and payment of the indebtedness of the village of Kingfisher City and to restrict the amount that can be so paid. Chap. 15.

[Took effect December 25, 1890]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

(561) § **4**. It shall be unlawful for the village of Kingfisher City to assume or pay any of the indebtedness of the provisional government of Kingfisher City (formerly Lisbon) in excess of the amount of three thousand and seventy-four dollars, or so much thereof as shall be found to have been contracted for in good faith by said provisional government, and for the benefit of the inhabitants of the land now embraced in the village of Kingfisher City, with interest thereon at the rate of seven per cent per annum from the date said indebtedness was allowed by the said provisional government. Limitation of payment.

(562) § **5**. It shall be the duty of the village trustees of the said village of Kingfisher City, before they shall assume or pay any of such indebtedness, to examine the accounts of the provisional government upon which said claims were allowed. Accounts examined.

This act shall be in force and effect from and after the final adjournment of the present session of the Legislative Assembly.

CHAPTER XV —CITIES OF THE FIRST CLASS

AN ACT providing for the incorporation and government of cities of the first class.

[Took effect December 25, 1890.]

ARTICLE.
1. General provisions.
2. Powers and duties of mayor.
3. Powers and duties of council.
4. Police judge and police force.
5. Miscellaneous.

ARTICLE 1.—GENERAL PROVISIONS.

SECTION.
1. Cities of first class defined.
2. Body corporate and politic, powers of.
3. Powers exercised by mayor and council.
4. Corporate name; service.
5. Election for organization, how called.
6. County commissioners to canvass vote; county clerk to issue certificate of election.
7. Mayor to appoint city marshal and other officers.
8. Time of holding election; officers to be elected, term of office.
9. Mayor to issue proclamation of election.
10. Return and canvass.
11. Who eligible to office, oath, bond.
12. Compensation of officers; removal.

(563) § **1**. All cities, towns, villages or communities of people residing in compact form in this Territory, having a population of over twenty-five hundred inhabitants, as shown by the last census taken thereof, and residing upon land platted into lots and blocks [shall], upon taking effect of this act, become municipal corporations and be governed by the provisions hereof, upon compliance with the provisions of this act. And all cities, towns, villages or communities of people, in this Territory, that shall Cities of the first class defined.

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hereafter attain to such population, shall, upon such population being ascertained by the corporate authorities thereof, and in case they are without corporate authorities, then by persons they may select for that purpose, and certified to the Governor of the Territory, be by him declared, by proclamation, to be cities of the first class, and from and after such proclamation, shall be governed by the provisions of this act.

Body corporate and politic, powers of.

(564) § **2.** All cities governed by the provisions of this act, shall be bodies corporate and politic, and shall have power to sue and be sued, to purchase and hold real and personal property for the use of the city, to sell and convey any real or personal property, owned by the city, and make such order respecting the same as may be conducive to the best interests of the city, to make all contracts and do all other acts in relation to the property and affairs of the city, necessary to the good government of the city, and to exercise of its corporate and administrative powers, to have and use a corporate seal, and alter the same at pleasure, and to exercise such other and further powers, as are, or may be conferred by law: *Provided, however*, That no real estate shall be bought or sold, nor shall any personal property, where the value of the personal property, contracted for at one purchase, exceeds five hundred dollars, until the purchase or sale be authorized by a majority vote of the electors, resident of the city, or village.

Powers exercised by mayor and council.

(565) § **3.** The powers granted to, and conferred upon cities of the first class, shall be exercised by the mayor and council of such cities, as provided by law.

Corporate name; service.

(566) § **4.** The corporate name of each city governed by this act, shall be, "The city of————" and all, and every notice, and process whatever affecting any such city, shall be served upon the mayor, and in his absence upon the president of the council, and in the absence of both, then, upon the city clerk.

Election for organization, how called.

(567) § **5.** Within thirty days after the filing [of] a petition signed by a majority of the legal voters of such proposed city, with the Governor, praying for organization under this act, the Governor of the Territory, shall call a special election in such city, to be governed hereby, at which election a mayor, city clerk, police judge, city treasurer, city attorney, an assessor, and eight councilmen, shall be elected to serve until the first annual election in such city, and until their successors are elected and qualified.

The proclamation of the Governor, calling such election, shall be published in some newspaper of general circulation in each city, where such election is to be held, for a period of at least twenty days prior to such election, and it shall be the duty of the Governor, in such proclamation, to establish as many polling places in each city, as he may deem necessary, and to appoint three judges, and two clerks, of election for each polling place.

The polls shall be opened on the day of election, at the hour of eight o'clock a. m. and close at the hour of six o'clock p. m. Such election shall be conducted, as near as may be, in accordance with the election laws in force at the time the same shall be held, and all persons, who shall have resided for thirty days next preceding

such election, in the city, in which they may offer to vote, and, for ten days in the ward in which they may offer to vote, and who are qualified electors of this Territory, at the time of such election, shall be qualified to vote thereat.

County commissioners to canvass vote. county clerk to issue certificate of election.

(568) § **6.** The board of county commissioners, of each county, in which an election may be held under the last preceding section, shall be the board of canvassers, and shall meet on the first Friday after the election, to canvass the vote, and the returns of the election shall be made to the county clerk before that time, and by him presented to the board of canvassers.

The persons receiving the highest number of votes for the several offices to be filled shall be declared elected, and shall receive a certificate, signed by the chairman of the board of county commissioners, and attested by the county clerk; the canvass of votes shall be spread upon the journal, together with the result, stating the names of all persons declared elected; and the county clerk, shall within five days after such canvass, issue a certificate of election to each person declared to be elected, and the refusal, or neglect for ten days, of any person after receiving such certificate, to qualify, shall cause a vacancy to exist in such office. The fees and mileage of county commissioners, and all expenses of such election, shall be paid by the city, when fully organized under this act.

Mayor to appoint city marshal and other officers.

(569.) § **7.** The mayor shall appoint, by and with the consent of the council, a city marshal, and a street commissioner, and may appoint an assistant marshal, city engineer, city physician, and such policemen and other officers as the mayor and council may deem necessary. The officers so appointed, shall hold their offices until their successors are chosen and qualified.

Time of holding election; officers to be elected, term of office.

(570) § **8.** The annual election, in cities of the first class, shall be held on the first Tuesday in April, 1891, and each year thereafter. At the annual election, in 1891, there shall be elected a mayor, city clerk, police judge, city treasurer, city attorney, city assessor, treasurer of the school board, one councilman, and one member of the school board from each ward, who shall hold their offices for two years, and one councilman, and one member of the school board, from each ward, who shall hold their offices for one year, all officers eleeted, thereafter, shall hold their offices two years, and until their successors are elected and qualified.

Mayor to issue proclamation of election.

(571) § **9.** The places of holding elections, annual and special, shall be designated by the mayor. He shall issue a proclamation for every such election, giving at least ten days notice thereof, announcing the offices to be filled, or the propositions to be voted upon, and the place in each ward, where the same is to be held, and he shall also designate in each ward, three electors, to act as judges, and two electors, to act as clerks of such election.

The polls shall be opened and closed at the hours as provided by the general election laws. Vacancies in the offices of judge and clerk of elections, shall be filled, and all matters not provided for herein pertaining to the manner of conducting such elections, shall be as provided for by the general election laws of the Territory.

Return and canvass,

(572) § **10.** The returns of all elections, after the first special election, shall be made and the canvass of the vote shall be had, in all respects, as provided in section six of this act, except that the city council, and city clerk, shall act, instead of the board of county commissioners, and county clerk.

Who eligible to office, oath, bond

(573) § **11.** All officers elected, or appointed, shall be qualified electors of said city, and all councilmen, and members of the school board, shall be actual residents of the ward for which they may be elected, and the removal of any officer from the city, or of any councilman, or member of the school board from the ward, for which he shall be elected, shall cause a vacancy in said office. Vacancies in office, provided for herein, shall be filled by appointment, by the council. The council shall require all city officers, elected or appointed, to take and subscribe an oath of office, and to give bonds for the faithful discharge of their duties.

Compensation of officers, removed.

(574) § **12.** The compensation of all city officers, shall be regulated by ordinance, but in no case shall a councilman, receive for his services as such, or for services on committees, or otherwise, for any one year, a sum exceeding fifty dollars. The council may, by a vote of a majority of all the members to be entered upon the journal, remove for cause any officer except the mayor.

ARTICLE 2.—POWERS AND DUTIES OF MAYOR.

SECTION.
1. Mayor to preside; when may vote.
2. Mayor to sign commissions and approve bonds.
3. Mayor and clerk to sign warrants on city treasurer.
4. Veto power.
5. Mayor's recommendation to council.
6. May require officer to report.
7. Must enforce ordinances.
8. Called citizens to enforce law.
9. May remit fines.
10. Vacancy in mayor's office.

Mayor to preside, when may vote

(575] § **1.** The mayor shall preside at all meetingsof the city council, and shall have a casting vote when the council is equally divided, and shall have the superintending control of all the officers, and affairs of the city, and shall take care that the ordinances of the city and the provisions of this act, are complied with.

Mayor to sign commissions and approve bonds

(576) § **2.** He shall sign the commissions and appointments of all officers elected or appointed, and endorse the approval of all official bonds, [approved] by the mayor and council.

Mayor and clerk to sign warrants on city treasurer

(577) § **3.** He shall sign all orders and warrants drawn upon the treasurer for money, and require the city clerk to attest the same, and to affix thereto the seal of the city, and keep an accurate record thereof, in a book to be provided for that purpose.

Veto power.

(578) § **4.** He shall have power to sign or veto any city ordinance passed by the city council: *Provided*, That any ordinance vetoed by the mayor, may be passed over his veto by a vote [of two-thirds of all the members of the council elected], notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance, or return the same with his objections in writing at the next regular meeting of the council, the same shall become a law without his signature.

(579) § **5.** He shall, from time to time, communicate to the city council such information and recommend such measures, as in his opinion may tend to the well being of the city. Mayor's recommendation to council.

(580) § **6.** He shall, when he deems it necessary, require any officer of the city to exhibit his accounts, or other [officials] papers, and to make a report to the city council in writing, touching any subject matter pertaining to his office, and if any officer upon such accounting, be found a defaulter, he shall be removed by the mayor and council. May require officer to report.

(581) § **7.** He shall be active and vigilant in enforcing all laws and ordinances, and shall cause all officers to be dealt with promptly, for any neglect or violation of their duty; and he shall have such jurisdiction as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health, quarantine, cemetery or water works ordinance, and regulation thereof. Must enforce ordinances

(582) § **8.** The mayor is hereby authorized to call upon every male inhabitant of the city, over eighteen years of age, and under the age of fifty years, to aid in enforcing the laws. Called citizens to enforce law

(583) § **9.** He shall have power to remit fines, and forfeitures, and to grant reprieves and pardons, for offenses arising under the ordinances of the city, by and with the consent of the council; but no such fine or forfeiture shall be remitted, or pardon granted, except at a session of the council, nor unless the reasons therefor, together with the order of remission or pardon, be entered on the journal by the clerk. He shall also have power to suspend all city officers, against whom charges of incompetency or dereliction of duty are preferred, until the mayor and city council can act thereon. May remit fines.

(584) § **10.** When any vacancy shall happen in the office of mayor, the president of the city council, for the time being, shall exercise the duties of the office of mayor, until such vacancy be filled, and in case of a temporary absence or disability of the mayor, until he shall return, and during the time he shall act as mayor, he shall receive the same compensation that the mayor would be entitled to. In case of a vacancy in the office of mayor, more than ninety days prior to the next election, the person acting as mayor, shall cause a new election to be held, giving ten days notice thereof by proclamation. Vacancy in mayor's office

ARTICLE 3—POWERS AND DUTIES OF COUNCIL.

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2. General powers of mayor and council.
3. Specific and additional powers of cities in their corporate capacities.
4. Shade trees.
5. Special assessments, how levied and collected.
6. Assessments, how made when property is not platted.
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41. Claims against city, how presented, when allowed.
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44. Cemetery lots, sale regulated.
45. Government of cemetery.
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47. Street paving, notice, contract, tax, sidewalks.

Meeting of council, special meetings, how called, quorum.

(585) § **1** Regular meetings of the council shall be held at such times, not less than once in each month, as shall be prescribed by ordinance. Special meetings, may be called by the mayor, or acting mayor, upon request or notice, in writing, signed by at least three members of the council, specifying the object and purpose of such meeting, by request or notice in writing, which shall be read at the meeting, and entered at length in the journal, and no business shall be transacted at such meeting, except that specified in the request. In all cases, it shall require a majority of the councilmen elected to constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as the council may, by ordinance, have previously prescribed.

General powers of mayor and council

(586) § **2.** The mayor and council shall have the care, management and control of the city and its finances, and shall have power to enact, ordain, alter, modify or repeal any and all ordinances, not repugnant to the laws of the United States and the Organic Act and laws of this Territory, as they shall deem expedient, and for the good government of the city, the preservation of the peace and good order, the suppression of vice and immorality, and the benefit of trade and commerce, and the health or the inhabitants thereof, and such ordinances, rules and regulations as may be necessary to carry such power into effect. They shall divide the city into not less than four wards, and establish the boundaries thereof. The council shall have no power to allow or pay any debt or obligation of any character arising from any act done, or thing bought by any provisional government, formerly existing, where the cities now are, nor of any debt, to any person made therewith under any guise whatsoever, unless authorized so to do by a majority of the legal voters of such city.

Specific and additional powers of cities in their corporate capacities.

(587) § **3.** The cities coming under the provisions of this act, in their corporate capacities, are authorized and empowered to

enact ordinances for the following purposes, in addition to the other powers granted by law:

First. To levy and collect taxes for general revenue purposes, not to exceed five mills on the dollar, in any one year, on all the real, mixed and personal property within the limits of said cities, taxable according to law, the valuation of such property to be taken from the assessment rolls in the county clerk's office.

Second. To open, straighten and improve streets, avenues and alleys, make sidewalks and build bridges, culverts and sewers within the city; and for the purpose of paying for the same, shall have power to make assessments in the following manner, to-wit:

First. For opening, widening and bringing to grade all streets, avenues and alleys, and for building bridges, culverts and sewers, and for foot-walks across streets, avenues and alleys, the assessment shall be made on all the taxable property within the limits of the city, not exceeding five mills on the dollar for these purposes in any one year.

Second. For making and repairing sidewalks, the assessment shall be made on all lots and pieces of ground abutting on the improvement, according to the front foot thereof.

Third. For paving, macadamizing, curbing and guttering all streets, avenues and alleys, and for doing all excavating and grading necessary for the same, after said streets, avenues and alleys have first been brought to grade, as provided in the first subdivision of this section, relating to the opening, widening and bringing to grade all streets, avenues and alleys and for all improvements of the squares and areas formed by the crossing of the streets. The assessment shall be made for each block separately, on all lots and pieces of ground to the center of the block, on either side of such street or avenue, the distance improved, or to be improved, or on the lots or pieces of ground abutting on such alley, according to the assessed value of the lots or pieces of ground, without regard to the buildings or improvements thereon; which value, shall be ascertained by three disinterested appraisers, appointed by the mayor and council. It shall be the duty of the appraisers, within ten days after being notified of their appointment, to proceed to appraise such lots and pieces of ground as may be designated by the council, after having taken and subscribed an oath to make a true and impartial appraisement, which appraisement shall be returned to the city council, at its first meeting, after the same shall have been completed. When said appraisement is returned, the mayor and council shall appoint a time for holding a special session, on some day to be fixed by them, to hear any complaint that may be made, as to the valuation of any lot or piece of ground appraised, as aforesaid, a notice of which special session shall be given by the mayor in the official paper of the city, and said mayor and council, at said special session, may alter the valuation of any lot or piece of ground, if in their opinion the same has been appraised too high or too low.

(588) § **4.** In addition to the powers of cities, coming under the provisions of this act, in their corporate capacities, mentioned

Shade trees.

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in section thirty-one of this act, they are authorized and empowered to enact ordinances for the purpose of planting, maintaining and protecting shade trees, in the streets and avenues, in addition to the other powers granted by law, whenever the same is petitioned for in the manner provided for in this act, for petitioning for sidewalks, and for the purpose of paying for the same, shall have power to make assessments and collect the tax in the same manner as is provided by this act, for assessing and collecting taxes for sidewalks.

Special assessments, how levied and collected.

(589) § **5.** The assessment made, pursuant to the third clause, of the second sub-division, of the second preceding section, shall be known as "special assessments for improvements," and except as hereinafter provided, shall be levied and collected as one tax, in addition to the taxes for general revenue purposes, and shall be certified by the city clerk, to the county clerk, to be placed on the tax roll for collection, subject to the same penalties, and collected in like manner as taxes under existing laws.

Assessments, how made when property is not platted

(590) § **6.** Where any improvement, specified in the second and third clauses of the second sub-division, of section thirty-one of this act shall be made, and the piece or pieces of land abutting on such improvement shall not be divided into lots or blocks, the assessments therein provided for, shall be made on the piece or pieces of ground adjoining such improvement, or through which the same may be located, to the distance of three hundred feet from the street, avenue or alley, upon which such improvements are made, extending along the street, avenue or alley, the distance improved or to be improved, as provided in said section.

Cities may borrow money and issue bonds restrictions.

(591) § **7.** The council may provide for making any and all improvements of a general nature in the city, and for the purpose of paying for the same, may from time to time, borrow money and issue bonds therefor, and street bonds to contractors and others, performing work, or furnishing materials; but no such money shall be borrowed; or bonds issued, (except street bonds to an amount not exceeding the taxes authorized by law to be levied for the year in which the same are issued and applicable to that purpose), until the city council shall be instructed so to do, by a majority of the votes cast by the tax payers of such city, as shown by the last tax roll, at an election held in such city for that purpose. Bonds issued under this section, except street bonds, shall be payable in not less than ten years, nor more than twenty years, from the date of their issue, with interest thereon, at a rate not exceeding seven per cent per annum with interest coupons attached, payable annually, or semi-annually Street bonds shall be payable in not more than one year from the time of their issue, and bear interest, not exceeding seven per cent per annum The council shall levy taxes on all taxable property within the city, in addition to other taxes, to pay said bonds at their maturity, and their interest coupons as they respectively become due, which taxes shall be paid in cash only: *Provided*, When any of said bonds are issued, for the purpose of paying for improvements, chargeable to any particular or local property, the taxes to pay the same shall be levied only on such property.

City indebtedness, how funded

(592) **8.** The council may appropriate money, and provide for the payment of the debts, and expenses, of the city, and when authorized by a majority vote of the taxpayers of said city, may provide for issuing bonds for the purpose of funding any and all indebtedness, now existing, or hereafter created: *Provided*, That said bonds shall be payable in not less than ten years, nor more than twenty years from the date of their issue, and that said bonds shall bear interest at a rate not exceeding ten per cent per annum, with interest coupons attached, payable annually or semi-annually: *And provided further*, That said bonds shall not be issued or appropriated for the purpose of funding said indebtedness of the city, unless for every dollar of the outstanding scrip, orders, bonds, coupons, judgments or other evidences of indebtedness, the city shall issue in exchange therefor, such bonds, at dollar for dollar. The council shall levy taxes on all the property in the city, in addition to other taxes for the payment of said coupons, as they become due, and the taxes, levied to pay the same, shall be payable only in cash.

May create sinking fund

(593) § **9.** The city council is hereby required to make provision from time to time, for a sinking fund to redeem, at maturity, the bonded indebtedness of the city, and the taxes levied for said sinking fund, shall be payable only in cash.

Tax to pay interest on bonds, payable only in cash

(594) § **10.** The city council is authorized, and required, to levy annually, taxes on all taxable property within the city, in addition to other taxes, and in sufficient amount for the purpose of paying the interest and coupons, as they become due, on all bonds of the city, now issued, or hereafter to be issued by the city, which taxes shall be payable only in cash.

Total tax not to exceed four per cent.

(595) § **11.** At no time shall the levy of all city taxes, of the current year for general purposes, exclusive of school taxes, exceed four per cent of the taxable property of the city, as shown by the assessment book of the preceding year.

Bonded indebtedness not to exceed twenty per cent of assessed value of property.

(596) § **12.** At no time shall all the bonded indebtedness of any city of the second [first] class, exceed twenty per cent of the assessed value of all the taxable property within said city, as shown by the assessment books of the year previous to the one on which the last issue of bonds was made.

Re-levy and re-assess

(597) § **13.** In case the corporate authorities of any city, have attempted to levy any taxes, or assessment for improvements, or for the payment of any bonds, or other evidence of debt, which taxes, assessments or bonds are, or may have been informal, illegal or void, for the want of sufficient authority or other cause, the council of such city, at the time fixed for levying general taxes, shall re-levy and re-assess any such assessment or taxes in the manner provided in this act.

Money must be appropriated by ordinance.

(598) § **14.** The mayor and council shall have no power to appropriate or issue any scrip, or draw any order on the treasurer, for any money, unless the same has been appropriated by ordinance, or ordered in pursuance of some object provided for by law: *Provided*, That no ordinance providing for the borrowing of moneys, levying taxes, or appropriating money, shall be of any validity unless a majority of all the councilmen elected,

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shall vote for such ordinance, and such vote shall be taken by yeas and nays, and the same shall be entered upon the record of proceedings of the council.

Taxes, how collected.

(599) § **15.** All taxes and assessments, shall be certified to the county clerk of the proper county, to be placed on the tax roll for collection, subject to the same penalties, and collected in like manner as other taxes are by law collected.

County treasurer to pay funds to city treasurer.

(600) § **16.** The county treasurer shall, on January 15, May 15, July 15, and November 15 of each year (or oftener if required by the city council) pay over to the city treasurer, all moneys and evidences of indebtedness collected for, and payable to any city of the second [first] class, and make a full itemized statement thereof, to the mayor and council, and the county treasurer shall take duplicate receipts, from the city treasurer, for the same, and file one of said receipts with the city clerk. The clerk shall enter in a book kept for that purpose, and under the proper head, all amounts so receipted for; said books and vouchers to be for reference in the settlements with the treasurers.

Financial statement to be published

(601) § **17.** The conncil shall, hereafter, cause to be published quarterly, between the fifteenth and twentieth days of March, June, September and December, in each year, a full and detailed statement of the receipts, expenditures and indebtedness of the city, for the quarter ending on the fifteenth of said months, respectively. All publications mentioned in this section shall be made in a newspaper in said city.

Poll tax.

(602) § **18.** The city council shall have power to impose by ordinance a poll tax, not exceeding one dollar on all able bodied males between the ages or twenty-one and fifty years; when such tax is authorized, the city clerk shall make and certify a list of those liable to pay the same, and deliver such list to the county clerk to be placed on the tax roll.

Occupation tax

(603) **19.** The city council shall have authority to levy and collect a license tax on auctioneers, contractors, druggists, hawkers, peddlers, bankers, brokers, pawnbrokers, merchants of all kinds, grocers, confectioners, restaurants, butchers, taverns, public boarding houses, dram shops, saloons, liquor sellers, billiard tables and other gambling tables, bowling alleys, drays, hacks, carriages, omnibuses, carts, wagons, and other vehicles used in the city for pay, hay scales, lumber dealers, furniture dealers, saddle or harness dealers, stationers, jewelers, livery stable keepers, real estate agents, express companies or agencies, life or fire insurance companies or agencies, telegraph companies or agencies, shows, theatres, all kinds of exhibitions for pay: *Provided, however*, That all scientific and literary lectures, and entertainments, shall be exempt from taxation, and also all concerts and musical or other entertainments given, exclusively by citizens of the city.

License taxes, how regulated.

(604) § **20.** All license taxes shall be regulated by ordinance; and except for shows, theaters and other exhibitions, shall expire on the last day of April next after the same are issued. No license shall be issued until the amount prescribed therefor shall be paid to the city treasurer, and no license shall in any case be assigned

or transferred. Licenses shall be signed by the mayor and clerk, and countersigned by the treasurer, and the clerk shall affix the corporate seal of the city thereto.

What prohibited by ordinance.

(605) § **21**. The city council shall have power to enact ordinances to restrain, prohibit and suppress tippling shops, billiard tables, bowling alleys, houses of prostitution and other disorderly houses, and practices, games and gambling houses, desecrations of the Sabbath day, commonly called Sunday, and all kinds of public indecencies. No license shall ever be granted for any house of prostitution, or for gambling house, gambling device, game of chance, or any disorderly house or practice; and no city officer shall accept or receive any hush money, or any money or valuable things, from any person or persons engaged in any such business, or practice, or grant any immunity or protection against a rigid enforcement of the laws and ordinances enacted to restrain, prohibit, and suppress any such business or practice.

Further restraints by ordinance.

(606) § **22**. The council may also restrain, and prohibit riots, routs, noises, assaults, assaults and batteries, petty larceny, disturbances or disorderly assemblies, and immoral or indecent shows, exhibitions or concerts, in any street, house or place in the city; and regulate, punish and prevent the discharge of fire arms, rockets, powder, fireworks, or other dangerously combustible material in the streets, lots, grounds, alleys or about or in the vicinity of any buildings.

Stock running at large, regulated.

(607) § **23**. The council may regulate, or prohibit the running at large of cattle, hogs, horses, mules, sheep, goats, and other animals, and cause such as may be running at large to be impounded, and sold, to discharge the costs and penalties provided for the violation of such prohibition, and the expense of impounding and keeping the same, and for such sale; and may, also, provide for the erection of all needful pens, pounds and buildings for the use of the city, within or without the city limits, and appoint and compensate keepers thereof, and establish and enforce rules governing the same. The council may, also, regulate and provide for taxing the owners and harborers of dogs, and authorize the killing of dogs, found at large, contrary to any ordinance regulating the same.

Racing and driving, control of.

(608) § **24.** The council may prevent and punish all horse racing, fast driving or riding in the streets, highways, alleys, bridges, or places in the city, and all games, practices or amusements therein likely to result in damage to any person or property, and regulate, prevent and punish the riding, driving or passing of horses, oxen, mules or other teams, or any vehicle drawn thereby, over, or upon, or across sidewalks, or along any streets of the city.

Chimneys and factories, new buildings, fire limit, protection against fire.

(609) § **25.** The council may regulate the construction of, and order the suppression of, and clearing of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory or business, which may be dangerous in causing, or promoting fires, and prescribe limits within which no dangerous or obnoxious and offensive business may be carried on.

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The council may, also, prescribe limits within which no building shall be constructed, except of brick, stone or other incombustible material, with fireproof roof, and impose a penalty for the violation of such ordinance; and may cause buildings commenced, put up or removed into fire limits, in violation of such ordinance, to be removed or abated.

The council may, also, procure fire-engines, hooks, ladders, buckets and other apparatus, and organize fire-engine, hook and ladder and bucket companies, and prescribe rules of duty and [for] the government thereof, with such penalties as they may deem proper, not exceeding one hundred dollars, and make all necessary appropriations therefor.

Control of streets and alleys

(610) § **26.** The council shall have power to open, widen, extend, or otherwise improve, any street, avenue, alley or lane; to create, open and improve any new street, avenue, alley or lane, and also to annul, vacate or discontinue the same, or to grant to any other public use whenever deemed necessary or expedient: *Provided*, That all damages sustained by the citizens of the city, or the owners of property therein, shall be ascertained as prescribed in section fifty-nine: *And provided further*, That whenever any street, avenue, alley or lane shall be vacated, the same shall revert to the owners of real estate thereto adjacent, on each side, in proportion to the frontage of such real estate, except in cases where such street, avenue, alley or lane shall have been taken and appropriated to public use, in a different proportion, in which case it shall revert to adjacent lots of real estate, in proportion as it was taken from them: *Provided*, That when in the opinion of the council of any such city, that it is necessary to re-open such alley, that they may order such alley opened without expense to the city.

Sidewalk obstructions, shade tree planting, street crossings hitching posts, etc.

(611) § **27.** The council may prohibit and prevent all encroachments into and upon the sidewalks, streets, avenues, alleys and other property of the city, and may provide for the removal of all obstructions from the sidewalks, curbstones, gutters and crosswalks, at the expense of the owners or occupiers of the grounds fronting thereon, or at the expense of the person placing the same there; the council may also regulate the planting and protection of shade trees in streets, the building of bulk heads, cellar and basement ways, stairways, railways, windows and doorways, awnings, hitching posts, and rails, lamp posts, awning posts, and all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks, or along any streets of the city.

Market place; city buildings.

(612) § **28.** The council may purchase ground for, and may erect and establish market houses, and market places, and regulate and govern the same, and also contract with any person or persons or association of persons, companies or corporations, for the erection and regulation of said market houses and market places, on such terms and conditions, and in such manner, as the council may prescribe, and raise all necessary revenue therefor, in the manner hereinbefore provided. The council may also in like

manner provide for the erection and government of any and all necessary buildings for the city.

Regulation of weights and measures.

(613) § **29**. The council may prescribe rules for the weighing and measuring of every commodity sold in the city, in all cases not otherwise provided for by law, and may provide for the inspection and weighing of hay, grain and coal, the measuring of wood and fuel, and determine the place or places of the same, and regulate and prescribe the place or places of exposing for sale, hay, coal and wood, and fix the fees and duties of the persons authorized to perform the duties named in this section.

Channel of water courses, changes

(614) § **30**. The council may establish, alter and change the channels of water courses, and wall them and cover them over; and may establish, make and regulate public wells, cisterns, aqueducts and reservoirs of water, and provide for filling the same.

Contracts for lighting streets.

(615) § **31**. The council may provide for, and regulate the lighting of the streets, the erection of lamp posts, and the council shall have the power to make contracts with, and authorize any person, company or association to erect gas or electric works in said city and give such person, company or association the privilege of furnishing gas, or electricity to light the streets, lanes and alleys of said city for any length of time, not exceeding twenty-one years. But no such grant shall be so conditioned as to prevent the council from granting to other persons, or companies, or corporations, the right to use the streets for like purposes; and all such grants shall be subject at all times, to reasonable regulations by ordinance, as to the use of streets and prices to be paid for gas or light.

Lands condemned for city purposes.

(616) § **32**. The council may purchase or condemn and hold for the city, within, or outside of the city limits, within five miles therefrom, all necessary lands for hospital purposes and water works and erect, establish and regulate the hospitals, work houses and poor houses, and provide for the government and support of the same, and make regulations to secure the general health of the city, and to prevent and remove nuisances, and to make provisions for furnishing the ~~city~~ with water, and water rates shall be fixed annually by the council at their first meeting in June: *Provided*, The condemnation of such property outside of the city limits, shall be regulated in all respects as provided by law for the condemnation of property for railroad purposes: *And provided further*, That the police jurisdiction of the city shall extend over such lands and property to the same extent as over public cemeteries.

Council's quarantine

(617) § **33**. The council may make regulations to prevent the introduction of contagious diseases into the city, and may make quarantine laws for that purpose, and enforce the same within five miles of the city.

Carrying deadly weapons, vagrants arrest.

(618) § **34**. The council may prohibit and punish the carrying of firearms, or other deadly weapons, concealed or otherwise, and may arrest and imprison, fine or set at work all vagrants and persons found in said city without visible means of support, or some legitimate business.

Regulations regarding railroads.

(619) § **35**. The council shall take all needful steps to protect

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the interest of the city, present or prospective, in any railroad leading from or towards the same; but they shall not take or subscribe any stock in any railroad.

Control of levees, depots, street crossings, etc.

(620) § **36.** The council shall have power to regulate levees, depots, depot grounds, and places of storing freight and goods and provide for the passage of railways through the streets, and public grounds of the city, also, to regulate the crossings of railway tracts, and to provide precautions and prescribe rules regulating the same, and to regulate the running of railway engines, cars and trucks within the limits of said city, and to prescribe rules relating thereto, and to govern the speed thereof, and to make any other and further provisions, rules and restrictions to prevent accidents at crossings and on the tracks of railways and to prevent fires from engines.

Private property taken for public use

(621) § **37.** Private property may be taken for public use, or for the purpose of giving the right of way, or other privilege, to any railway company, or for the purpose of establishing market houses, or market places, or for any other necessary purpose; but in every case the city shall make the person or persons whose property shall be taken, or injured thereby, adequate compensation therefor, to be determined by the assessment of five disinterested house holders of the city, who shall be selected and compensated as may be prescribed by ordinance, and who shall, in the discharge of their duties, act under oath, faithfully and impartially, to make the assessment to them submitted; and in determining the same, said house holders shall consider the benefit resulting to, as well as the damages sustained by, the owner of the property so taken, except in condemnation of rights of way for private corporations. Appeals may be taken to the district court from the decision of such house holders in the same manner and within the same time as from judgments of a justice of the peace.

Library

(622) § **38.** The council may establish and maintain public libraries and reading rooms at the expense of the city.

Council s ordinance power.

(623) § **39.** For any purpose, or purposes, mentioned in the preceding sections, the council shall have power to enact and make all necessary ordinances, rules and regulations, and they shall, also, have power to enact and make all such ordinances, by-laws, rules and regulations, not inconsistent with the laws of the Territory, as may be expedient for maintaining the peace, good government, and welfare of the city, and its trade and commerce; and all ordinances may be enforced by prescribing and inflicting, upon inhabitants or other persons violating the same such fine, not exceeding one hundred dollars, or such imprisonment not exceeding three months, or both such fine and imprisonment, as may be just, for any offense, recoverable with costs of suit, together with judgment of imprisonment, until the fine and costs be paid or satisfied; and any person, committed for the non-payment of fine and costs, or either, while in custody, may be compelled to work on the streets, alleys, avenues, areas and public grounds of the city, under the direction of the street commissioner or other proper officer, and at such rate per day, as the council may by ordinance prescribe, until such fine and costs are satisfied.

(624) § **40.** Before the city council shall make any contract for building bridges or sidewalks, or for any work on streets, or for any other work or improvement, an estimate of the cost thereof shall be made by the city engineer, and submitted to the council, and no contract shall be entered into, for any work or improvement, for a price exceeding such estimate.

Engineer's estimate

(625) § **41.** All claims against the city must be presented in writing, with a full account of the items, and verified by the oath of the claimant, or his agent, that the same is correct, reasonable and just, and no claim or demand shall be audited or allowed, unless presented and verified, as provided for in this section: *Provided*, No costs shall be recovered against such city, in any action brought against it, for any unliquidated claim, which has not been presented to the city council to be audited, nor upon claims allowed in part unless the recovery shall be for a greater sum than the amount allowed with the interest due: *And provided, further*, That no action shall be maintained against such city, in exercising or failure to exercise, any corporate power or authority in any case where such action would not lie against a private individual under like circumstances.

Claims against city, how presented, when allowed.

(626) § **42.** The council shall elect one of its own body, who shall be styled the "President of the Council," and who shall preside at all meetings of the council in the absence of the mayor; and in the absence of the president shall elect one of its own body to occupy the place temporarily, and who shall be styled acting president of the council; and the president, and acting president, when occupying the place of the mayor, shall have the same privileges as other members of the council, and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the city as if done by the mayor.

President of the council.

(627) § **43.** The mayor and council of any city of the first class may purchase, hold and pay for, in the manner hereinbefore mentioned, lands not exceeding eighty acres in one body, outside the limits of such city, for the purpose of the burial of the dead. The council shall provide for the survey, platting, grading, fencing, ornamenting and improving all the burial and cemetery grounds and the avenues leading thereto, owned by such city, and may construct walks and rear and protect ornamental trees therein, and provide for the paying the expenses thereof.

Cemetery.

(628) § **44.** Cemetery lots, owned by such city, shall be conveyed by certificates, signed by the mayor, and countersigned by the clerk under the seal of the city, specifying that the purchaser, to whom the same is issued, is the owner of the lot or lots described therein by number, as laid down on such map or plat, for the purpose of interment, and such certificates shall vest in the purchaser, his or her heirs and assigns, a right, in fee simple, to such lot for the sole purpose of interment under the regulations of the city council, and such certificate shall be entitled to be recorded in the office of the register of deeds of the proper county without further acknowledgment; and such description of lots shall be deemed and recognized as sufficient description thereof. The council may limit the number of lots which shall be owned by the

Cemetery lots, sale regulated.

same person, at the same time; may prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots, and may prohibit any division of the use of said lots and any improper adornment thereof; but no religious test shall be made as to the ownership of the lots, the burial therein, for the ornamentation of graves, or of such lots.

Government of cemetery

(629) § **45.** The council may pass rules and ordinances, imposing penalties and fines, not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof, and punishing trespassers therein; and the officers of such city shall have as full jurisdiction and power in the enforcing of such rules and ordinances, as though they related to the city itself.

Unauthoriz e d claims against city allowed.

(630) § **46**. The members of any city council, who shall vote to appropriate money, or to allow any bill or claims, not authorized by law shall be personally liable to said city for the amount of such money appropriated, or bills or claims allowed, with costs of suit, in an action before any court, having competent jurisdiction.

Street paving, notice, contract, tax, sidewalks

(631) § **47**. When the city council shall deem it necessary to pave, macadamize, curb, gutter, or otherwise improve any street, avenue, alley or lane, or any part thereof, within the limits of the city for which a special tax is to be levied, as herein provided, such council shall, by resolution, declare such work or improvement necessary to be done, and such resolution shall be published for four consecutive weeks, in the official newspaper of the city; and if a majority of the resident owners of the property, liable to taxation therefor, shall not, within twenty days thereafter, file with the clerk of said city, their protest against such improvements, then such council shall have power to cause such improvements to be made, and to contract therefor, and to levy the taxes as herein provided. No such notice shall be required for the making of any sidewalk, but the council may, upon the petition of ten or more citizens, order any sidewalks constructed, as provided in this act, if by them deemed necessary. No formality whatever shall be required to authorize the repairing of sidewalks and making assessments therefor, but the street commissioner or the committee on improvements, may after first giving the five days notice to each occupying owner, or tenant, of the necessity therefor, and without such notice, if the lot or piece of ground be unoccupied, and make repairs at any time, keeping an account of the cost thereof, and reporting the same to the city council for assessment; and each lot or piece of ground, abutting on such sidewalk, shall be liable for the costs of repairs made along, or in front of such lot or piece of ground as reported to the city council, together with a penalty of twenty-five per centum on the amount thereof.

ARTICLE 4.—POLICE JUDGE AND POLICE FORCE.

SECTION.
1. Police judge's jurisdiction.
2 Vacancy.
3. Office, how provided, when open.
4 Prosecutions for violating ordinance.
5 Police docket
SECTION.
6. Warrants, service of; fees, special deputy.
7. Speedy trial; recognizance; when committed.
8. Recognizance forfeited.

SECTION.
9. Cases transferred from police judge to justice.
10. Witnesses, how summoned, fees.
11. Continuance, witnesses notified.
12. Judgment, what to contain.
13. Defendant, how discharged from commitment.
14. Appeal from police court.
15. Malicious prosecutor to pay costs.
16. Oaths administered; contempt punished.
17. Monthly report, where filed, etc.
18. Marshal as chief of police
19. Policeman's powers.
20. Relation of mayor, marshal and police.
21. Marshal or police removed

Police judge's jurisdiction.

(632) § **1.** The police judge shall be *ex officio* a conservator of the peace, and shall have exclusive original jurisdiction, to hear and determine all offenses against the ordinances of the city; he shall keep a docket, in which he shall enter every cause commenced before him, as police judge. The police judge shall be *ex officio* a justice of the peace within the city. If the police judge be absent, sick or disqualified from acting, a justice of the peace of said city shall act as police judge, until such absence or objection shall cease.

Vacancy.

(633) § **2.** In case of a vacancy in the office of police judge, by removal or otherwise, he council shall appoint a justice of the peace, or some suitable and proper person, to fill said vacancy, and the person so appointed shall hold his office for the unexpired term.

Office, how provided, when open.

(634) § **3.** The council of each city of the first class, may provide at the expense of the city, a suitable room or office for the police judge, and he shall hold his court in such room, and his court shall be open every day except Sundays.

Prosecution for violating ordinance.

(635) § **4.** All prosecutions for violating any city ordinance shall be entitled, "The city of.....against....," (naming the city and the person or persons charged), and the police judge shall state in his docket the name of the complainant, the nature or character of the offense, the date of the trial, the names of all witnesses sworn and examined, the finding of the court, and judgment or fine and costs, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in such case; the complaint, when made by the marshal, assistant marshal or regular policeman against any person arrested without process and in custody, need not be in writing; but when the accused is not in custody, the complaint shall be in writing and sworn to before a warrant be issued for his arrest. In no case shall a judgment of conviction be rendered, except upon sufficient legal testimony given on a public trial, or upon a plea of guilty made in open court.

Police docket.

(636) § **5.** The city council shall furnish the police judge with a suitable docket, and he shall deliver said docket and all books and papers pertaining to his office of police judge to his successor in office.

Warrants, service of, fees; special deputy.

(637) § **6.** All warrants issued by the police judge shall be directed to the city marshal, and such warrants may be executed by the marshal, assistant marshal, the sheriff of the county, or any constable of the city. The sheriff or constable making such service shall be entitled to receive therefor, such fees as are

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allowed them by law for similar services, to be taxed as costs. In case of the absence of the officer from the court, the police judge shall deputize some proper person to execute any process issued by him.

Speedy trial, recognizance; when committed

(638) § **7.** When any person shall be arrested and brought before the police judge, it shall be his duty to hear and determine the complaint alleged against the defendant forthwith, unless for good cause the trial be posponed to a time certain; in which case he shall require the defendant to enter into a recognizance with sufficient surety, conditioned that he will appear before the said judge, at the time and place appointed, then and there to answer the complaint alleged against him, and if he fail or refuse to enter into such recognizance, the defendant shall be committed to prison and held to answer said complaint as aforesaid.

Recognizance forfeited

(639) § **8.** In case of the breach of any recognizance entered into, as aforesaid, the same shall be deemed and declared forfeited, and the mayor shall cause the same to be prosecuted against the principal and surety, or the surety alone. Such action shall be in the name of the city as plaintiff, and may be prosecuted in the district court on the transcript of the proceedings before the police judge, and a copy of such recognizance certified by the police judge, and all moneys recovered in such action shall be paid over to the city treasurer, to the credit of the general revenue fund of the city.

Cases transferred from police judge to justice

(640) § **9.** If in the progress of any trial before the police judge it shall appear that the accused ought to be upon his trial for an offense against the criminal laws of the Territory, and not cognizable before the said police judge, he shall immediately stop all further proceedings before him as such judge, and thereupon he shall cause complaint to be made before him as a justice of the peace, and shall proceed as in other cases cognizable before the justices of the peace.

Witnesses, how summoned, fees

(641) § **10.** It shall be the duty of the said judge to summon all persons whose testimony may be deemed essential as witnesses at the trial, and to enforce their attendance by attachment, if necessary; each witness shall receive the sum of fifty cents for each day's attendance, to be taxed as other costs in the case.

Continuance, witnesses notified

(642) § **11.** When a trial shall be continued by the police judge it shall not be necessary to summon any witnesses who may be present at the continuance, but the judge shall verbally notify such witnesses as either party may require to attend before him to testify in the cause, on the day set for trial, which verbal notice shall be as valid as a summons.

Judgment, what to contain

(643) § **12.** If the defendant plead or be found guilty, the police judge shall declare and assess the punishment prescribed by ordinance, and render judgment accordingly, and for cost of suit, and that the defendant stand committed until the judgment is complied with.

Defendant, how discharged from commitment

(644) § **13.** Any defendant committed under the provisions of this act, may be discharged on payment of fine and costs, or on perfecting an appeal as hereinafter provided

Appeal from police court.

(645) § **14.** In all cases before the police judge arising under the ordinances of the city, an appeal may be taken by the defendant to the district court, but no such appeal shall be allowed unless the defendant, within ten days, shall enter into a recognizance with good and sufficient sureties, to be approved by the police judge, conditioned for the personal appearance of the appellant before the district court of the county on the first day of the next term thereof.

Malicious prosecutor to pay costs.

(646) § **15.** If upon the trial before the police judge, or the district court, it appear to the satisfaction of the court, that the prosecution was commenced without probable cause, and from malicious motives, the court shall state the name of the prosecutor or complainant in the finding, and shall impose the costs of prosecution upon him; and judgment shall be rendered against such prosecutor, or complainant, that he pay such costs and stand committed until the same are paid.

Oaths administered; contempt punished.

(647) § **16.** The police judge shall have power to administer the oaths, and enforce due obedience to all orders, rules and judgments made by him, and may fine or imprison for contempt offered to such judge, while holding his court, or to process issued by him in the same manner and the same extent, as the district court.

Monthly report, where filed etc

(648) § **17.** The police judge shall, within the first three days of each month make out a list of all the cases heard or tried before him as police judge during the preceding month, giving in each case the name of the defendent, the fine imposed, if any, the amount of costs (showing the amount taxed in favor of each officer) the names of the defendants committed, the causes appealed to the district court, and the amount collected by him as fine and costs separately. Such judge shall verify such list and statement by affidavit, and file the same forthwith, with the city clerk, who shall lay the same before the city council at their first session thereafter; and the police judge shall within the three days aforesaid, pay to the city treasurer, the full amount of all fines collected by him for violation of city ordinances during the preceding month, less only the amount of cost legally taxed for himself and the marshal, or other officers serving process, in cases where the defendant on hearing or trial was found not guilty and discharged. He shall take from the city treasurer duplicate receipts for the amount of fines so paid one of which he shall file with the city clerk. If the police judge shall thereafter collect any cost so retained, he shall state such fact and the amount thereof in his next monthly report and pay the same to the city treasurer taking and filing receipts therefor, as aforesaid.

Marshal as chief of police.

(649) § **18.** The marshal shall be chief of police, and shall at all times have power to make, or order an arrest, with proper process, for any offense against the laws of the Territory, or of the city, and bring the offender for trial before the proper officer of the city, and to arrest without process, in all cases where any such offense shall be committed, or attempted to be committed in his presence.

Policemen's powers

(650) § **19.** The policemen of the city shall have power to

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arrest all offenders against the laws of the Territory or of the city, by day or by night, in the same manner as the marshal, and keep them in the city prison or other place to prevent their escape until a trial can be had before the proper officer

Relations of mayor, marshal and police.

(651) § **20.** The marshal, in the discharge of his duties, shall be subject to the orders of the mayor only. Policemen, in the discharge of their duties, shall be subject to the order of the mayor and marshal only. But any marshal, or assistant marshal or policeman may be removed by the mayor and council as provided in section eighteen, or in the following section.

Marshal or police removed.

(652) § **21.** Upon complaint to the mayor, or president, or acting president of the council, that any marshal, assistant marshal or policeman has been intoxicated, or has been gambling, or has abused the power of his office, or been guilty of a brutal or indecent act, or taken or received any money, property or valuable things whatever, other than his legal salary, or fees, as a consideration for doing or omitting to do any particular act, or has refused to make an arrest in the proper case, or consented to, or connived at the escape of any person legally arrested, and in custody, the officer so receiving such complaint, shall lay the same before the council, at their first meeting thereafter. The council shall carefully and honestly inquire as to the truth of such complaint, and if they find the accused guilty, they shall forthwith by order to be entered on their journal, remove him from office; and he shall not be again appointed to such office unless two-thirds of the councilmen elect consent thereto.

ARTICLE 5.—MISCELLANEOUS.

SECTION.		SECTION.	
1.	Cities to consolidate.	8.	Powers of officers defined by ordinance; grants and franchises not legalized
2.	Consolidation, how brought about	9	Style of ordinance; when to take effect.
3.	Property, how held after consolidation.	10.	Consideration of ordinances; yea and nay vote.
4	Name of new corporations; what offices to hold after consolidation.	11.	"Ordinance book;" clerk's certificate proof of ordinance; ordinances, when used as evidence.
5	Adjacent territory.	12.	Council may revise ordinances.
6.	City's property exempt from taxation.		
7	Ordinances in effect before passage of this act.		

Cities to consolidate

(653) § **1.** Any two or more cities, or municipal corporations, lying adjacent to each other, may consolidate and become one city or municipal corporation, as the case may be, and under the name and with all the powers, obligations and duties of the city, or municipal corporation, whose name shall be assumed and adopted in the proceedings in this act provided.

Consolidation, how brought about.

(654) § **2.** Whenever the city council of any city, or the board of trustees of any municipal corporation, shall, by resolution, or whenever the resident citizens liable to pay a majority of the taxes of such citizens assessed, as shown by the last preceding tax roll of the county, on the property, both real and personal situated within the boundaries of such city or municipal corporation, shall by petition, ask of the city council of any adjacent city, or

the board of trustees of any adjacent municipal corporation, for a consolidation of such adjacent cities, or municipal corporations, or a city with a minor municipal corporation, as the case may be, setting forth the terms of such consolidation, it shall be lawful for the said city council, or board of trustees so addressed, after having first submitted the question of such consolidation and the terms and conditions thereof, to a vote of the qualified electors of such corporation, and a majority shall vote in favor of such consolidation, such body is hereby empowered by ordinance, to consolidate such adjacent cities, or municipal corporation, so passing such ordinance of consolidation upon the terms and conditions of the question so submitted as aforesaid.

Property, how held after consolidation.

(655) § **3.** Whenever two adjacent cities, or municipal corporations shall be consolidated and made one the property, both real and personal, the notes, bonds, obligations, accounts, demands, evidences of debt, rights and choses in action, franchises, books, records, maps, plats, and effects of every name and nature, of and belonging, or to be belonging, to the said adjacent cities or municipal corporations so consolidated, shall be the property of, and belonging to such new corporation, and the territory and property of each city or municipal corporation, as described before, such consolidation shall be, and remain liable for all abligations and debts of every name and nature, legally against, due or to become due against said city or municipal corporation at the time of said consolidation, unless otherwise provided by the terms and conditions of such act of consolidation; and the property, real and personal, within such territory, shall be assessed to pay such obligation, tbe same as if such consolidation had not been made; and in no event shall the new corporation be liable for such prior existing obligations by the city or municipal corporation, unless expressly provided for in the act of consolidation.

Name of new corporation, what officers to hold after consolidation.

(656) § **4.** All laws applicable to any city or municipal corporation whose name is by the provisions of the second preceding section of this act, made the name of the new corporation so as aforesaid created, shall apply to the said corporation so created by consolidation so far as they may be applicable, and all officers of the city or municipal corporation, whose name is by the provisions of the second preceding section of this act made the name of the new corporation so as aforesaid created, shall remain in office, and be the officers of the new corporation and ward, and district officers shall be officers over the same territory respectively, as under the old corporation; and the council, or board of trustees of said city or municipal corporation, as the case may be, so created by consolidation, as in this act provided, is hereby vested with power to make provision by ordinance, or by law, for calling elections, and to select officers to fill vacancies in offices arising in censequence of such consolidation.

Adjacent territory

(657) § **5.** The city council in their discretion may add from the territory adjacent to the city limits, as defined and existing at the date of the approval of this act, such additional territory as they may deem proper, and shall in every case have power to increase or diminish the city limits, in such manner as in their judg-

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ment and discretion may redound to the benefit of the city: *Provided*, That in no case shall any adjacent territory, except when sub-divided into tracts or parcels of less than five acres, be added to the limits of a city without the consent in writing of the owners of a majority of the whole number of acres, owned by residents of Oklahoma, of the territory to be added: *Provided*, That tracts of land in excess of five acres used for agricultural purposes shall not be subject to city taxes

City's property exempt from taxation.

(658) § **6**. All lands, houses, moneys, debts due the city, and property and assets of every description belonging to any city or municipal corporation under this act, shall be exempt from taxation.

Ordinances in effect before passage of this act

(659) § **7**. All ordinances and parts of ordinances in force at the time this act shall take effect, not inconsistent herewith, shall remain in force until altered or repealed.

Powers of officers defined by ordinance grants and franchises not legalized

(660) § **8**. The duties, powers and privileges of all officers of every character, in any way connected with the city government not herein defined, shall be defined by ordinance of the city council, but this section shall not be construed as legalizing any franchise or grants heretofore made.

Style of ordinances; when to take effect.

(661) § **9**. The style of all ordinances, shall be: Be it ordained by the mayor and councilmen of the city of..... and all ordinances shall, as soon as practicable after they are passed, be published in some newspaper printed within the city, or if no paper be published in said city, then in some paper having a general circulation therein, or by ten written or printed handbills posted up at as many public places, or in pamphlet form, to be distributed or sold, as may be provided by ordinance, and no ordinance having any object beyond the bare appropriation of money shall be in force until published as herein provided. One publication in a newspaper of said city shall be sufficient, and the publisher thereof shall prefix to every ordinance a line in brackets stating correctly the date of such publication thus: [Published ....] giving the month, day and year of the publication: *Provided, however*, That when the council of said city shall order a revision of ordinances of said city, a publication in the book or pamphlet of ordinances shall be deemed a publication under this act: *Provided further*, That not less than fifty copies of said pamphlet or book of ordinances shall be published.

Consideration of ordinance. yea and nay vote

(662) § **10.** All ordinances of the city shall be read and considered by sections at a public meeting of the council and the vote on their final passage shall be taken by yeas and nays, which shall be entered on the journal by the clerk, and no ordinance shall be valid unless a majority of the members elect vote in favor thereof: *Provided, however*, That when the councilmen are all present and voting, and there shall be a tie, the mayor shall have power to give the casting vote on the passage of any ordinance: *And provided further*, That the council, in revising the ordinances of such city, shall have power to enact the same, pursuant to such rules and regulations as the council may provide: *And provided further*, That no ordinance shall contain more than one subject,

which shall be clearly expressed in its title, and no ordinance shall be revised or amended, unless the new ordinance contain the entire ordinance revised, or the section or sections amended, and the section or sections so amended, shall be repealed.

Ordinance book; clerk's certificate proof of ordinances; ordinances when to be evidence.

(663) § **11.** The city clerk shall keep an "Ordinance Book," in which he shall enter at length, in a plain and distinct hand writing, every ordinance in force in said city at the time this act takes effect, (unless said ordinances are already so recorded), and every ordinance hereafter enacted immediately after its passage, and he shall append thereto a note, stating the date of its passage, the page of the journal containing the record of the final vote on its passage, and also the name of the newspaper in which the ordinance was published and the date of such publication. All ordinances of the city may be proved by the certificate of the clerk, under the seal of the city, and when printed or published in pamphlet form and purporting to be published by the authority of the city, shall be read and received in evidence in all courts and places without further proof.

Council may revise ordinances.

(664) §**12.** The council may, from time to time, authorize the revision of the city ordinances and their publication in pamphlet form, and they may cause to be published in connection therewith the laws relating to cities of the first class and such forms and instructions as they shall deem advisable.

This act shall take effect and be in force from and after the adjournment of the first Legislative Assembly

CHAPTER XVI.—CITIES, TOWNS AND VILLAGES.

[Took effect December 25, 1890]

ARTICLE.
1. Incorporation of towns.
2. Town and city plats.
3. Changing limits of cities and towns.
4 Changing names of towns or villages.
5. Changing wards
6 Locating and vacating streets and alleys.
7 Waterworks and fire apparatus.
8. Road taxes in cities or towns.
9. Town sites located on public lands.

ARTICLE 1.—INCORPORATION OF TOWNS.

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1. Town site to be surveyed and platted.
2 Census to be taken.
3. Survey, map and census subject to examination.
4 Petition for incorporation.
5. County commissioners to make order of incorporation.
6. Notice of meeting to be given.
7. Opening of polls.
8 Election of inspectors.
9. Manner of voting.
10 Division of town into districts.
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SECTION.
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56. Proceedings when trial postponed,
57. Justice summons witnesses, etc
58. Trials, how governed,
59. Justice renders judgment when defendant is found guilty.
60. Justice is a peace officer; court open every day except Sunday.
61. Appeals.
62. Punishment for violation of ordinances.
63. Powers of Justice; exceptions; jury.
64. Fees of Jurors.
65. Costs of jury taxed on defendant, when
66. Proceedings, how governed.

Ordinances.

SECTION.
67. How proven.

(665) § **1**. Persons intending to make application for the incorporation of a town as hereinafter provided shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such town; such survey shall be made by a practical surveyor, and show the courses and distances of the boundaries thereof, and the quantity of land contained therein, the accuracy of which survey and map shall be verified by the affidavit of such surveyor written thereon or annexed thereto.

Townsites to be surveyed and platted.

Census to be taken.

(666) § **2.** Such person shall cause an accurate census to be taken of the resident population of such territory as it may be on some day not more than thirty days previous to the time of presenting such application to the board of county commissioners as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same.

Survey, map and census subject to examination.

(667) § **3.** Such survey, map and census when completed and verified as aforesaid shall be left at some convenient place within said Territory for examintion by those having an interest in such application, for a period of not less than thirty days.

Petition for incorporation.

(668) § **4.** Such application shall be by petition subscribed by the applicants, and also by not less than one-third of the whole number of qualified voters residing within such territory; and such petition shall set forth the boundaries thereof, the quantity of land embraced according to the survey, and the resident population therein contained according to said census taken; and the said petition shall have attached thereto or written thereupon affidavits verifying the facts alleged therein, and it shall be presented at the time indicated in the notice of such application or as soon thereafter as the board can receive and consider the same.

County commissioners to make order of incorporation

(669) § **5.** The board of county commissioners in hearing such application shall first require proof either by affidavft or by oral examination of witnesses before them that the said survey, map and census were subject to examination in the manner and for the period required by section 669; and if said board be satisfied that the requirements of this act have been fully complied with they shall then make an order declaring that such territory shall with the assent of the qualified voters thereof as hereinafter provided be an incorporated town by the name specified in the application aforesaid, which name shall be different from that of every other town iu this Territory, and they shall also include in such order a notice for a meeting of the qualified voters resident in said proposed town, at a convenient place therein to be by them named, on some day within on month therefrom, to determine whether such territory shall be an incorporated town.

Notice of meeting to be given.

(670) § **6.** The board shall cause ten days' notice of such meeting by publication in a newspaper if one be published in the county, and by posting up copies of said notice not less than ten in number at the most public places in said proposed incorporated town.

Opening of polls

(671) § **7.** At the meeting of the qualified voters as herein provided polls shall be opened at nine o'clock in the forenoon of such day and shall be kept open until four o'clock in the afternoón, when they shall be closed.

Election of inspectors

(672) § **8.** The voters at such meeting shall first proceed to the election of three inspectors who after being duly chosen and qualified, and one of their number elected clerk, shall without delay proclaim to the meeting that the poll is now open and that they are ready to receive the ballots of the voters.

Manner of voting.

(673) § **9.** The qualified voters of said proposed incorporated

town shall vote by ballot having thereon the words "for incorporation, yes;" or the words "for incorporation, no;" and if a majority of the ballots given at such meeting shall have thereon the word "no," the voters of such proposed town shall be deemed not to have assented to the incorporation thereof as a town, and no further proceedings shall be had in relation thereto; but if a majority of such ballots shall have thereon the word "yes," such territory shall from that time be deemed an incorporated town, to have continuance thereafter by the name and style specified in the order made by the board of county commissioners as hereinbefore provided; and the inspectors of such meeting shall make a statement showing the whole number of ballots given at such meeting—the number having the word "yes" thereon, and the number having the word "no" thereon—which statement shall be verified by the affidavit of such inspectors and shall be retnrned to such board of commissioners at their next session, who if satisfied of the legality of such election shall make an order declaring that said town has been incorporated by the name adopted, which order shall be conclusive of such incorporation in all suits by or against such corporation; and the existence of such corporation by the name and style aforesaid shall thereafter be judicially taken notice of in all courts and places in this territory without specially pleading or alleging the same.

Division of town into districts

(674) § **10.** Such inspectors when they shall have returned the statement as aforesaid shall next proceed to divide said town into not less than three nor more than seven districts, having due regard to the equitable apportionment of the population among the same, and the convenience and contiguity of such district.

Notice of election

(675) § **11.** They shall also give ten days' notice by publication in a newspaper if one be printed within such town, and by posting such notices in five public places therein, of an election to be held in such town for the purpose of electing officers thereof, naming the place therein and the day upon which the same shall be had, but such day named shall be within twenty days from the posting of such notices. Every subsequent notice of a corporation election shall be given in like manner by the clerk of said town.

Annual election, when held.

(676) § **12** An election for officers of said town after the first election shall be held annually on the first Monday of May of each year, and at every such election the preceding board of trustees or any of them shall act as the inspectors thereof.

How long polls shall remain open

(677) § **13.** At all electious in said town the polls shall be open at nine o'clock in the forenoon and shall not be finally closed until four o'clock in the afternoon of said day.

Inspector to be judges of election

(678) § **14.** Such inspectors shall preside at such first election and be the inspectors thereof, and in the receiving and canvassing of votes shall be governed by the laws then existing, so far as they are applicable, for the election of county officers.

What town officers to be elected

(679) § **15.** There shall be elected at the first and at every subsequent election one trustee from each district in said town, and also a clerk, assessor, treasurer, marshal, and justice of the peace, who shall respectively hold their offices until the first Mon-

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day in May next following or until their successors are elected and qualified: *Provided, however*, That nothing herein contained shall prevent the respective offices of clerk, treasurer, assessor and marshal from being held by one and the same person.

Persons having highest number of votes to be elected, duty of inspectors.

(680) § **16.** The persons having the higest number of votes for the office of trustee shall be declared elected as such trustees, and the persons who receive the highest number of votes respectively for clerk, marshal, assessor, treasurer, and justice of the peace, as designated by the ballot for such office, shall be declared so elected; and if two or more shall have an equal and highest number of votes, and there be no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected; and it shall be the further duty of such inspectors to make a certified statement over their own signatures, of the persons elected to fill the several offices in said town, and file the same with the county clerk in the county thereof within ten days after the date of such election; and no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with.

County clerk to make record of statement.

(681) § **17.** It shall be the duty of the county clerk of the proper county to make a record of such certified statement, for which services there shall be paid the same fee as is allowed for similar services in other cases.

Vacancy in board of trustees, how filled.

(682) § **18.** A vacancy occuring in the board of trustees or in any corporation office shall be filled by appointment at a special meeting of the trustees called for that purpose, but such appointment shall be made from the district if a trustee be appointed in which the vacancy has occurred, and shall in no case extend beyond the annual elections provided for in this act.

Oath of officers.

(683) § **19.** The board of trustees chosen as aforesaid shall elect a president from their own body, and such president, trustees and all other officers elect shall within five days after such election take and subscribe before same person authorized to administer the same the usual oath or affirmation for the faithful performance of the duties of their respective offices.

Board of trustees a body corporate.

(684) § **20.** The president and trustees of such town and their successors in office, shall constitute a body politic and corporate, by the name of the "town of .....," and shall be capable in law to prosecute and defend suits to which they are a party.

Notice of special meetings.

(685) § **21.** Special meetings of the qualified voters may be called by the clerk by order of the trustees of said town, by giving ten days' notice thereof in a newspaper if any be printed in such town, otherwise by posting up such notices in five public places therein, and such notice shall state the object for which each meeting is called.

Powers of board of trustees

(686) § **22.** The board of trustees shall have the following powers, viz.:

First. To have a common seal and alter he same.

Second. To purchase, hold or convey any estate real or personal for the use of the corporation, so far as such purchase

may be necessary to carry out the objects contemplated by this act.

Third. To organize fire companies, hook and ladder companies, to regulate their government and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire buckets, which are hereby declared to be appurtenances to the real estate and exempt from execution, seizure or sale; and if the owner shall refuse to procure suitable ladders or fire buckets after reasonable notice the trustees may procure and deliver the same to him; and in default of payment therefor may recover of said owner the value of said ladder or fire buckets, by suit before the justice of the peace of the town incorporated by the provisions of this act, and costs accrued thereby; to regulate the storage of gunpowder and other materials; to direct the construction of a place for the safe deposit of ashes; and may under any order by them, entered upon the proper book of the board, visit or appoint one or more fire wardens to visit and examine at all reasonable hours dwelling houses, lots, yards, inclosures and buildings of every description, discover if any of them are in a dangerous condition and provide proper remedies for such dangers; to regulate the manner of putting up stoves and stove pipes; to prevent out-fires and the use of fireworks and the discharge of firearms within the limit of said corporation or such parts thereof as they may think proper; to compel the inhabitants of such town to aid in the extinguishment of fire and prevent its communication to other buildings, under such penalties as are in this act provided; to construct and preserve reservoirs, wells, pumps, and other water works, and to regulate the use thereof, and generally to establish other measures of prudence, for the prevention or extinguishment of fires as they shall deem proper.

Fourth. To declare what shall constitute a nuisance and to prevent, abate and remove the same and take such other measures for the preservation of the public health as they shall deem necesssary.

Fifth. To restrain from running at large, cattle, swine or other animals.

Sixth. To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame; and to authorize the seizure and destruction of gambling apparatus.

Seventh. To license, regulate or restrain auction establishments, travelling peddlers, public exhibitions and the sale of intoxicating liquors within the corporation.

Eighth. To establish and regulate markets and build market houses and direct the location of slaughter houses.

Ninth. To lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings, and to keep them in repair and to vacate the same.

Tenth. To appoint street commissioners and also fire wardens, not exceeding three.

Eleventh. To prohibit incumbrance of the sidewalks of said town, and riding or driving thereon except to cross the same.

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Twelfth. To provide means for keeping and preserving the peace and quietness of such town.

Thirteenth. To insure the public property of such town.

Fourteenth. To purchase, lay out and regulate cemeteries.

Fifteenth. To plant trees upon public grounds and along the streets of such town, and provide for their culture and preservation, and to enclose any public square or other public ground within said corporation.

Sixteenth. To assess annual taxes not exceeding fifty cents on the one hundred dollars valuation on all property subject by law to taxation within the town and certify the same to the county commissioners to be by them levied and collected as other taxes.

Seventeenth. To levy and collect annually a tax of one dollar on each male dog and two dollars on each female dog owned and kept within such town, also to levy and collect one dollar poll tax on all male able-bodied residents of the town, over twenty-one and under fifty years of age.

Eighteenth. To make and establish such by-laws, ordinances and regulations not repugnant to the laws of this Territory as may be necessary to carry into effect the provisions of this act, and to repeal, alter or amend the same as they shall seem to the board of trustees of such town to require; but every by-law, ordinance or regulation unless in case of emergency shall be published in a newspaper in such town if one be printed therein, or posted in five public places at least ten days before the same shall take effect.

Nineteenth. To enact fines, penalties and forfeitures for violations of this act or of any by-law or ordinance by them established, not exceeding ten dollars for any one offense, which may be recovered by action in the name of the corporation, but such board may remit the whole or any part of the fine, penalty or forfeiture: *Provided*, That the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required to be paid for such license although it may exceed the sum of ten dollars.

Twentieth. To authorize the construction and maintenance of street railways, water maines and water pipes and gas mains and gas pipes, electric light and telephone wires, along or through the streets and alleys within the corporate limits and to grant franchises and rights to persons, associations or corporations for such purposes, and to regulate the same, but no exclusive right shall be granted for any such purposes. The street may be granted on the same terms to all companies desiring to compete with each other in the business of furnishing gas, electricity, telephone accommodations, electric lights, water or street railway accommodations and all shall be subject to reasonable regulations by ordinance, which ordinance may be altered and changed at the pleasure of the council.

Twenty-first. When not otherwise directed by the Statutes of this Territory, the towns and villages within this Territory shall, by ordinance, grant or refuse permits to sell alcoholic, vinous or malt liquors within their corporate limits and shall have full power

to make all regulations in regard thereto and shall have full power by ordinance to collect the licenses and to affix the amount and terms of paying the same and to provide for what purposes the money so collected shall be expended, and may apply it to the support of schools in the town or village and may provide the punishment for violation of their ordinances, and may inflict punishment therefor; and such regulations shall extend two miles from the outer corporate limits of the town or village.

Jurisdiction of trustees over public grounds.

(687) § **23**. The trustees shall have jurisdiction over any commons or public grounds belonging to said town, and shall have power to regulate, with the consent of the majority of the owners thereof, the banks, shores and wharves of that portion of any navigable streams within the corporate limits, but no ferries heretofore or which may hereafter be established by law shall be prejudiced or in any manner affected by the provisions of this act.

Appropriation of moneys.

(688) § **24.** All moneys however derived belonging to such corporation shall only be appropriated for such objects and defraying such expenses as accrue or necessarily arise in the exercise of powers granted by this act. No appropriation shall be made without an order to that effect entered upon a proper book to be kept for that purpose by such board.

Accounts must be audited.

(689) § **25**. No account or claim against said town shall be audited or allowed by the board of trustees unless it be made out fully and itemized, and every such account audited shall be numbered from one upwards in the order they were presented and a memorandum of the same entered upon a book to be kept exclusively for that purpose.

Payment of accounts.

(690) § **26.** No account or claim shall be paid unless audited and allowed by the board as aforesaid, and no moneys shall be drawn from the treasury except upon a warrant from the treasurer signed by the president of said town and attested by the clerk thereof.

Certain officers to give bonds.

(691) § **27**. The clerk, assessor, treasurer, marshal and justice of the peace, shall within ten days after their election or appointment each and severally give bonds payable to the town of ....., with freehold sureties, to such an amount as the board of trustees shall direct; but the bonds of the treasurer and marshal shall respectively be for double the amount of the estimated tax duplicate for the current year.

Books, etc, to be delivered to successor.

(692) § **28**. All books, vouchers, moneys or other property belonging to the corporation and in charge or possession of any officer of the same shall be delivered to his successor when qualified.

Board of trustees determine amount of tax

(693) § **29**. The board of trustees shall before the third Tuesday in May of each year determine the amount of general tax for the current year.

Duties of assessor

(694) § **30.** All property within such corporation liable to taxation shall be assessed as provided by law, and the assessor shall in addition to the returns to be made to the county clerk, make a return of his assessment roll embraced within the incorporated town, to the town board on or before the second Tuesday in April of each year.

Duty of trustees after correction of tax list.

(695) § **31**. When the assessment roll shall have been corrected and completed the trustees shall levy a tax upon the taxable property of said town to such an amount as they may deem necessary, and shall set opposite the name of each person taxed a description and valuation of the property charged therewith and the amount of tax assessed against such person; and when such tax list shall have been made they shall cause a copy thereof with a warrant annexed to be delivered to the marshal of such town. The assessment roll and tax list shall be deposited with the county treasurer who is hereby charged with the safe custody of the same.

How taxes collected.

(696) § **32.** The treasurer of such county shall collect the corporation taxes, upon such duplicate as other taxes are collected and pay the same over to the treasurer of such corporation. The county treasurer shall be allowed and paid by the corporation the same compensation as is paid by the county for like services.

Special taxes assessed to be a lien.

(697) § **33.** All taxes assessed by the board of trustees of tows incorporated under the provisions of this act for the grading, paving or otherwise improving the streets of the town, or for building or repairing sidewalks of the town, shall be a lien on the lots or pieces of ground subject to the same from the time the amount thereof shall have been ascertained; and in case any error or irregularity should occur in levying or collecting any such tax proceedings may be taken anew so as to obviate any such error or irregularity.

When taxes due.

(698) § **34.** Such special tax shall be due and may be collected as the improvements are completed in front or along or upon any block, lot or piece of ground, at the time the improvement is completed, as shall be provided in the ordinance providing for taxes. If such tax is not paid within thirty days after becoming due, there shall be added thereto the penalty of ten per cent and in addition thereto penalties provided for other delinquent taxes.

What costs may be included in special tax.

(699) § **35**. The cost and expenses of grading, filling, paving, macadamizing, culverting, curbing and ditching or otherwise improving streets, sidewalks, alleys, avenues or lanes at their intersections, may be included in the special tax levied for the improvement of any street, sidewalk, alley, avenue or lane as may be deemed best by the board of trustees of such town.

Marshal's duty in relation to special taxes

(700) § **36**. When the special tax is levied it shall be the duty of the marshal of such town to calculate the amount of tax on any block, lot or piece of ground, and file a statement thereof with the town clerk, who shall as soon as the tax is due on any block, lot or piece of ground issue a certificate describing it, its number and lot and block, and stating the amount of tax due thereon, and the name of the person entitled to the same, and the purpose for which said tax was levied; and such certificate so given shall be the tax warrant of the collector, and shall be by the clerk placed in the hands of the marshal, and he shall keep a record of all such warrants and enter on the margin of such records all amounts paid and by whom paid.

Duties of town treasurer.

(701) § **37.** The treasurer of every incorporated town shall so

keep his accounts as to show where and from what sources all moneys paid him have been derived, and to whom and when such moneys or any part thereof have been paid. The treasurer shall grant all licenses authorized by this act upon the presentation of the receipt of the marshal that the money therefor has been paid to said marshal. His books, accounts and vouchers shall at all times be subject to the examination of the board of trustees, and it is hereby made their duty to examine the same at a regular meeting of such board on some day between the first and last Mondays of April in each year, and have settlement with the said treasurer.

Board of trustees to publish receipts and expenditures.

(702) § **38**. It shall be the duty of the board of trustees immediately after the annual settlement with the treasurer of said corporation to publish in a newspaper if one be printed therein, or if there be no newspaper then by posting in three or more public places, an exhibit of the receipts and expenditures specifying the sources of such receipts, what appropriations were made, for what objects, and the specific amount of each.

Duties of town clerk

(703) § **39**. The clerk of such town shall have the custody of the records, books and papers of the board of trustees and shall attend all meetings and record the proceedings of said board, and shall perform all other duties appertaining to his office, as required of him by the by-laws.

Powers of marshal.

(704) § **40**. The marshal of such town shall be a peace officer and shall possess the powers and be subject to the liabilities possessed and conferred by law upon sheriffs in executing the orders of the trustees or enforcing the by-laws and ordinances of said town.

Trustees to superintend grading, etc

(705) § **41**. The board of trustees shall superintend the grading, paving and improving of streets and the building and repairing of sidewalks.

Fire wardens, duties of.

(706) § **42**. The fire wardens shall attend all fires and give their personal superintendence to extinguish the same, and do all other acts required by the by-laws, and obey all orders given by the board of trustees in relation to the fire department. Trustees shall by virtue of their office be fire wardens.

Compensation of town officers.

(707) § **43**. The trustees, clerk, assessor, treasurer, marshal and justice of the peace shall respectively receive for their services such compensation as the board of trustees in their by-laws may decide; and said board shall cause to be paid other officers of such town for their services a just and reasonable compensation.

Sidewalks, streets, etc, petition for building or repairing.

(708) § **44**. Whenever two-thirds of the resident owners in number or in value of real estate bounding both sides of any street not less than one square, shall petition to have such street graded, paved or otherwise improved or the sidewalk thereof built or repaired, or when two-thirds of the owners of real estate in number or in value on one side of such street shall desire a sidewalk on that side, it shall be the duty of such board to levy and cause to be collected by tax upon the owners of real estate, lot or lots on such street or part of street such a sum of money as is necessary for the improvement of said street or sidewalk or the building of said sidewalk in front of each of the respective lots or

at the side of any corner lot or lots or real estate: *Provided, however*, That no real estate, lot or lots shall be taxed as aforesaid for sidewalks built or improvements done at a greater distance from the front of said real estate, lot or lots than one-half the distance to the opposite side of said street.

No one exempt from highway tax

(709) § **45.** Nothing contained in this act shall exempt the inhabitants of any town from the payment of highway taxes legally assessed, nor from the formation of one or more road districts irrespective of the corporate limits of such town.

Addition to corporation.

(710) § **46.** When two-thirds of the owners of a tier of out-lots adjoining an incorporated town shall sign a petition asking that the corporate limits of said town be extended so as to include said out-lots, the board of trustees of said town shall cause said petition to be recorded and make an order that said tier of out-lots shall thereafter be included and constituted a part of said corporation, and the inhabitants residing thereon and owners thereof shall be subject to and entitled to all privileges of said corporation.

Annexing additional lots

(711) § **47.** Whenever there shall be lots laid off and platted adjoining such town, and a record of the same is made in the register of deeds' office of the proper county, the trustees may by a resolution of their board extend the boundary of such town so as to include such lots; and the lots thus annexed shall thereafter form a part of such town and be within the jurisdiction thereof. The trustees shall immediately thereafter file a copy of such resolution, together with the plat and map of survey defining the boundaries of such addition, in the office of the register aforesaid.

Proceedings of trustees to annex additions.

(712) § **48.** When any town shall desire to annex contiguous territory thereto not platted or laid [out] or recorded, the trustees shall present to the board of county commissioners a petition setting forth the reasons for such annexation, and shall accompany the same with a map or plat accurately describing by metes and bounds the territory proposed to be attached, which shall be verified by affidavit. Such trustees shall give thirty days notice by publication in a newspaper printed in such town, if any, otherwise in the county, or if none there, by posting up such notice in five or more public places within the corporation; a copy of such notice shall be served on the owner or owners of such territory if known and are residents of the county.

County board to order annexation

(713) § **49.** The board of county commissioners upon the reception of such petition shall consider the same and shall have the testimony offered for or against such annexation, and if after inspection of the map and the testimony being heard such board is of the opinion that the prayer of such petition should be granted it shall cause an entry to be made on the order book specifying the territory annexed, with the boundaries thereof according to the survey, which entry or an attested copy thereof shall be conclusive evidence in all courts of such annexation: *Provided, however*, That no lands used for agricultural purposes shall be taken within the corporate limits and taxed to any greater rate than other adjoining lands without the c rporation.

Dissolution of corporation.

(714) § **50.** When an application signed by one-third of the

legal voters of any incorporated town shall be presented to the board of trustees in writing asking for a dissolution of the corporation, setting forth the reasons therefor, it shall be competent for said board if they deem the reasons good to call a meeting of the voters of said town by giving ten days' notice thereof as provided in this act, to determine whether such corporation shall be dissolved. The board of trustees shall preside at such meeting and a poll shall be opened as at any other corporation election, and the voters shall vote by ballot, "yes" or "no." If a majority of all the votes given shall have thereon the word "yes," and such votes shall have been given by two-fifths of all the legal voters in such town, a statement of the vote signed by the president and attested by the clerk shall be filed in the register of deeds' office of the county, and such town shall at the expiration of six months from the time of holding such meeting cease to be a corporation, and the property belonging to such corporation after the payment of its debts and liabilities shall be disposed of in such manner as a majority of the voters of such town at any special meeting thereof may direct.

Dissolution not to affect existing contracts.

(715) § **51.** No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party.

Proof of compliance with law by town.

(716) § **52.** Whenever any suit shall be instituted by an incorporated town it shall not be required to show its compliance with any of the provisions of this act as to its organization or publication of by-laws or ordinances unless the same is controverted by affidavit.

Debts heretofore contracted.

(717 § **53.** No debt or liability due to or from any town incorporated under the laws of the State of Nebraska, extended over this Territory, shall be unpaid by reason of such town being brought within the provisions of this act, and becoming incorporated under it: *Provided, however*, No indebtedness or liability created by any provisional city or town government shall be recognized or paid, except as specially provided by law.

Town justice of the peace, jurisdiction of.

(718) § **54.** Justices of the peace of any town heretofore or hereafter organized under the provisions of this chapter shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of such town, and concurrent jurisdiction with all other justices in all civil cases and in all criminal cases for offenses against the laws of the Territory, committed within the county where such town is situated; and whenever complaint shall be made to the justice of the peace of such town, upon oath or affirmation of any person competent to testify against the accused, that an offense had been committed of which such justice of the peace has jurisdiction, said justice of the peace shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the marshal of the town, the sheriff or any constable of the county, or any person specially appointed by the justice for the purpose, and in all preliminary examinations before such justice he shall be governed by the code of criminal procedure, and in all trials before such justice for offenses against the Territory he shall be governed by the justices' code.

Duty of justice when defendant appears

(719) § **55.** When any person shall be brought before such justice of the peace upon such warrant it shall be his duty to hear and determine the complaint alleged against the defendant.

Proceedings when trial is postponed.

(720) § **56.** Upon good cause shown such justice of the peace may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into bond with sufficient security conditioned that he will appear before such justice of the peace at the time and place appointed, and then and there to answer the complaint alleged against him.

Justice to summon witnesses, etc.

(721) § **57.** It shall be the duty of such justice of the peace to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary, and when a trial shall be continued by such justice of the peace he may verbally notify such witnesses as may be present at the continuance to attend before him to testify in the cause set for trial, and such verbal notice shall be as valid as a summons.

Trials, how governed

(722) § **58.** All trials before such justice of the peace shall be governed by the criminal procedure applicable to justices' courts.

Justice to render judgment when defendant found guilty.

(723) § **59.** In all trials for offenses under the ordinances of the town incorporated under and by the provisions of this act, if the defendant is found guilty such justice of the peace shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until the judgment be complied with, in no case to exceed one day for every seventy-five cents of the fine and costs assessed against said defendant.

Justice is peace officer; court open every day except Sunday

(724) § **60.** Such justice of the peace shall be a conservator of the peace and his court shall be opened every day except Sunday to hear and determine any and all cases cognizable before him; and he shall have power to bring parties forthwith before him for trial; and no act shall be performed by him on Sunday except to receive complaints, issue process and take bail.

Appeals.

(725) § **61.** In all cases before such justice of the peace an appeal may be taken by the defendant to the district court of the county in which such town is situated; but no appeal shall be allowed unless such defendant shall within ten days enter into recognizance with sufficient securities to be approved by such justice of the peace, conditioned for the payment of the fine and costs and costs of appeal, and that he will render himself in execution thereof if it should be determined against the appellant.

Punishment for violation of ordinances.

(726) § **62.** Any person convicted before such justice of the peace of an offense under the ordinances of the town shall be punished by fine as may be regulated by ordinances.

Powers of justice; exceptions; jury.

(727) § **63.** The justice of the peace of the town organized under the provisions of this act shall have power to enforce obedience to all orders, rules, judgments and decrees made by him; and he may fine or imprison for contempt offered to him while holding his court or to process issued or orders made by him, in the same manner and to the same extent as provided for courts of justice of the peace. On the trial of any case in said court it shall be the duty of such justice of the peace to sign any bill of exceptions rendered to the court during the progress of such trial

provided the truth of the matter be fairly stated; and thereupon said exceptions shall be entered in the record of such trial and become a part thereof; and any final conviction, sentence or judgment of said court may be examined by the district court of the county in which such town is situated, on writ of error which may be allowed by the district court or the judge thereof for sufficient cause, and proceedings may be stayed as may be deemed reasonable, and the revising court shall in such proceedings take judicial notice of all the ordinances of such town. Cases before such justices of the peace, arising under town ordinances, shall be tried and determined by such justice of the peace without the intervention of a jury unless the defendant demand a trial by jury; and when a demand shall be so made the trial shall be by jury of twelve citizens of such town having the qualifications of jurors, who shall be summoned by the marshals of such towns upon a venire issued by such justice of the peace. The venire for a jury shall contain eighteen names, three of which shall be stricken off the list by the defendant and three by the marshal of such town; the remaining twelve names shall constitute a jury for the trial of a cause. If there is any challenge for cause such justice of the peace shall try the question in a summary manner, who may examine the challenged jurors under oath.

Fees of jurors.

(728) § **64.** Such jurors shall be paid fifty cents for their services as jurors in each case.

Costs of jury taxed to defendant, when; proceedings; how governed.

(729) § **65.** In case the defendant is found guilty the costs of the jury shall be taxed against him as a part of the costs of the case and the amount thereof shall be a part of the judgment.

(730) § **66.** In all cases not herein specially provided for the process and proceedings of the court of such justice of the peace shall be governed by the laws regulating proceedings in justices' courts in criminal cases.

How ordinances may be proven.

(731) § **67.** All ordinances of the town may be proven by the ordinance book of the town or the certificate of the clerk of the town under seal of the town; and when printed in a newspaper or published in a book or pamphlet form and purported to be published or printed by the authority of the town shall be read and received in all courts and places without further proof.

ARTICLE 2.—TOWN AND CITY PLATS.

General Plats.

SECTION.
1. Survey and plat must be made.
2. Lots and squares numbered.
3. Base-line, how formed.
4. Plat or map must be certified and acknowledged.
5. Lands donated or granted; land for streets
6. Record of plat in unorganized counties.
7. Towns already laid out must comply with this act.
8. Fees of surveyor and register.
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Vacation of Town Plats by District Court.

SECTION.
12. District court may alter or vacate towns.
13. Notice of application, how given.
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Vacation of Town and City Plats.

SECTION.
15. Town and city plats, how vacated.
16. Part of plat vacated, how.
17. Proprietor's rights when vacated.
18. Register of deeds to mark plats vacated.
19. Owner may plat again.

Survey and plat must be made

(732) § **1.** When any person wishes to lay out a town in this Territory or an addition or subdivision of out-lots, such person shall cause the same to be surveyed and a plat thereof made which shall particularly describe and set forth all the streets, alleys, commons or public grounds and all in and out-lot or fractional lots within or adjoining said town, giving the names, width, courses, boundaries and extent of all such streets and alleys.

Lots and squares numbered.

(733) § **2.** All the in-lots intended for sale shall be numbered in progressive numbers or by squares in which they are situated, and their precise length and width shall be stated on said map or plat; and out-lots shall in like manner be surveyed and numbered and their precise length and width stated on the plat or map, together with any streets, alleys or roads which shall divide or border the same.

Base-line, how formed.

(734) § **3.** The proprietor or proprietors of the town, addition or subdivision of out-lots, by themselves or agents, shall at the time of surveying and laying the same cause to be planted and firmly fixed in the ground on the line of the main streets of said town two good and sufficient stones of such size and dimension as the surveyor shall direct, said stones to be at least two hundred and fifty yards apart; and the line thus formed shall be a base line from which to make future surveys; and the point or points where the same may be found shall be distinguished on the plat or map.

Plat or map must be certified and acknowledged.

(735) § **4.** The plat or map after having been completed shall be certified by the surveyor and the officers; and every person or persons whose duty it shall be to comply with the foregoing requisitions shall at or before the time of offering said plat or map for record acknowledge the same before any person authorized to take the acknowledgment of deeds. A certificate of such acknowledgment shall by the officer taking the same be indorsed on the plat or map, which certificate of the survey and acknowledgment shall also be recorded and form a part of the record.

Lands donated or granted; land for streets.

(736) § **5.** When the plat or map shall have been made out and certified, acknowledged and recorded as required by this chapter, every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on said plat or map, shall be deemed in law and equity a sufficient conveyance to vest the fee-simple of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes a general warranty against such donor or donors, their heirs or representatives, to said donee or donees, grantee or grantees, for his, her or their use for the uses and purposes therein named, expressed

and intended, and no other use and purpose whatever; and the land intended to be used for the streets, alleys, ways, commons or other public uses in any town or city or addition thereto shall be held in the corporate name thereof in trust to and for the use and purposes set forth and expressed or intended.

Record of plat in unorganized counties.

(737) § **6.** If the county in which said town or addition is situated shall not be organized, then in that case the plat or map shall be recorded in the register's office of that county to which the county in which said town is situated shall at the time be attached for judicial purposes.

Towns already laid out must comply with this act

(738) § **7.** When any town, addition or subdivision has been heretofore laid out and lots sold in this Territory by agents or proprietors, and a plat or map of the same has not been acknowledge and recorded in conformity with acts heretofore in force, it shall be the duty and it is hereby required of the county commissioners or a majority of them in such county, or proprietor or proprietors who have laid out the same, or his, her or their legal representatives, to have the same fairly, fully and clearly made out, acknowledged and recorded in the proper county, in the form and manner required by this article, noticing and particularly describing the donation of lands or otherwise to individual societies, bodies politic, or for common or public purposes: *Provided*, That if the lots shall have been differently numbered and sales made and they cannot be well changed they shall be returned as originally stated; but in all other respects the plat or map shall conform to the requisitions of this chapter.

Penalty if sale or lease is offered before compliance with this act

(739) § **8.** The surveyor who shall lay out, survey and plat any town or addition shall be entitled to receive twenty-five cents for each and every in and out lot the same may contain, unless otherwise agreed, and the register of deeds of the county recording the same shall receive the sum of two cents for each and every lot as aforesaid; the said plat and survey to be by him transcribed or copied into a book to be provided for that purpose.

(740) § **9.** If any person or persons shall dispose of, offer for sale or lease for any time any out or in-lots in any town or city or in any addition to any town or city or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of this chapter shall have been complied with, every person so offending shall forfeit and pay the sum of ten dollars for each and every lot or part of a lot sold or disposed of, leased or offered for sale.

Penalty if officer or other person neglect to do duty

(741) § **10.** If any officer or other person or persons whose duty it is to comply with any of the requisitions of this chapter shall neglect or refuse so to do, he or they shall forfeit and pay a sum of not less than ten nor more than one hundred dollars for each and every month he or they shall delay a compliance.

Forfeitures and liabilities

(742) § **11.** All forfeitures aad liabilities which may be incurred or arise under this article shall be prosecuted for and recovered in the name of the county treasurer; and any officer or officers paying over any money to the said treasurer, received

under any of the provisions of this article, shall take his receipt therefor and forthwith file the said receipt with the clerk of the board of county commissioners, and the said clerk shall charge the amount of said receipt against said treasurer on the books of the county commissioners.

District court may alter or vacate towns.

(743) § **12.** The district courts are hereby authorized and empowered on application made by the proprietors of any town within their proper county to alter or vacate the same or any part thereof.

Notice of application for vacation, how given.

(744) § **13.** If any proprietor or proprietors of a town shall be desirious of altering or vacating the same or any part thereof, such proprietor or proprietors shall give notice in writing of such intended application in at least two of the most public places in the county wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in said county if there be one, at least forty days prior to the sitting of the court to which he or they intend to make such application.

Proceedings before the court.

(745) § **14.** If such applicant or applicants shall produce to said court satisfactory evidence that the notice required by the preceding section has been given, the court shall proceed to hear and determine said petition, and may alter or vacate said town or any part thereof, and order their proceedings thereon to be recorded by the clerk with the records of said court.

Town and city plats, how vacated.

(746) § **15.** Any plat of any town or city or addition thereto or any subdivision of land may be vacated by the proprietors thereof at any time before the sale of any lots therein by a written instrument declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same office with the plat to be vacated; and the executing and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons and public grounds laid out as described in such plat. And in cases where any lots have been sold the plat may be vacated as herein provided by all the owners of lots in such plat joining in the execution of the writing aforesaid: *Provided*, That this act shall not be construed as applying to any of the territory included within the limits of any incorporated city, town or village created and organized under and by virtue of a special act of the legislature.

Part of plat vacated, how.

(747) § **16.** Any part of a plat may be vacated under the provisions and subject the conditions of this chapter: *Provided*, Such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat: *And provided further*, That nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law.

Proprietor's rights when vacated.

(748) § **17.** When any part of a plat shall be vacated as aforesaid the proprietors of the lots so vacated may enclose the streets, alleys and public grounds adjoining said lots in equal proportion.

Register of deeds to mark plat "vacated."

(749) § **18.** The register of deeds in whose office the plats

aforesaid are recorded shall write in plain, legible letters across that part of said plat so vacated the word "vacated," and also make a reference on the same, to the volume and page in which the said instrument of vacation is recorded.

Owner may plat again.

(750) § **19.** The owner of any lots in a plat so vacated may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor, and when such plat is acknowledged by such owner and is recorded in the record office of the county such lots may be conveyed and assessed by the numbers given them on such plat.

ARTICLE 3.—CHANGING LIMITS OF CITIES AND TOWNS.

SECTION.
1. Limits may be extended.
2. Limits may be restricted.
3. Notice of presentation of petition to be published.
4. Petition presented to district court, when
5. Duty of court.
6. Map of added territory to be filed.

Limits may be extended.

(751) § **1.** On petition in writing signed by not less than three-fourths of the legal voters and by the owners of not less three-fourth (in value) of the property in any territory contiguous to any incorporated city or town and not embraced within the limits thereof, the city council of the city or the board of trustees of the town, as the case may be, may by ordinance annex such territory to such city or town upon filing a copy of such ordinance with an accurate map of the territory annexed (duly certified by the mayor of the city or the president of the board of trustees of the town) in the office of the register of deeds of the county where the annexed territory or the greater portion of it is situated, and having the same recorded therein.

Limits may be restricted

(752) § **2.** On petition in writing signed by not less than three-fourths of the legal voters and by the owners of not less than three-fourths (in value) of the property in any territory within any incorporated city or town, and being upon the border and within the limits thereof, the city council of the city or the board of trustees of the town, as the case may be, may disconnect and exclude such territory from such city or town: *Provided,* That the provisions of this section shall only apply to lands not laid out into city or town lots or blocks.

Notice of presentation of petition to be published.

(753) § **3.** No final action shall be taken by the city council or the board of trustees, as the case may be, upon any petition presented in pursuance of the provisions of sections 751 and 752, until notice of the presentation of such petition has been given by the petitioners by publication at least once in each week for two successive weeks in some newspaper published in the city or town where the petition has been presented; or if no newspaper be published in such city or town, then in the newspaper published nearest to such city or town.

Petition presented to district court, when.

(754) § **4.** Upon the failure of the city council or the board of trustees, as the case may be, to grant the request contained in a petition presented in accordance with the provisions of sections 751 and 752, for thirty days after the last publication of the notice provided for in section 753, or upon a refusal to grant such re-

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quest, the petitioners may present their petition to the district court of the county in which such city or town or the greater portion of it is situated, by filing such petition with the clerk of said court. Notice of such filing shall be served by the petitioners upon the mayor of the city or the president of the board of trustees of the town, as the case may be, together with a notice of the time and place when and where a hearing shall be had upon such petition, at least ten days before the date of such hearing. The hearing on the petition may be had at a regular or special term of the district court or by the court in vacation.

Duty of court.

(755) § **5.** If upon the hearing the court shall find that the request of the petitioners ought to be granted and can be so granted without injustice to the inhabitants or persons interested, the court shall so order. If the court shall find against the petitioners the petition shall be dismissed at the cost of the petitioners.

Map of added territory to be filed.

(756) § **6.** When any territory is annexed by ordinance or by a decree or order of court to any city or town as provided in this act, it shall be the duty of the mayor of the city or of the president of the board of trustees of the town, as the case may be, to cause an accurate map of such added territory, together with a copy of the ordinance for the annexation or a copy of the decree or order of court therefor, duly certified, to be filed and recorded in the office of the register of deeds of the county in which such added territory or the greater portion of it is situated. If territory is disconnected or excluded from any city or town a copy of the ordinance or decree therefor shall be so filed and recorded at the expense of the petitioners therefor.

ARTICLE 4—CHANGING NAMES OF TOWNS OR VILLAGES.

SECTION.
1. Petition.
2. Notice.
3. Duty of county commissioners.
4. Record.
5. Filing proof.
6. Costs.

Petition.

(757) § **1.** When any number of the inhabitants of any town or village shall desire to change the name thereof, there shall be filed in the office of the county clerk or county auditor a petition for that purpose, which must be signed by at least two-thirds of the qualified electors of said town or village, setting forth the name by which said town or village is known, its location as near as practicable, and giving the name which they desire the town shall thereafter be known by.

Notice

(758) § **2.** Notice of the filing of said petition and the time and place when the same shall be heard and the objects and purposes thereof shall be given by posting up a written or printed notice in at least five public places in the town or village the name of which is sought to be changed, at least four weeks before the meeting of the board of county commissioners.

Duty of county commissioners.

(759) § **3.** At the next regular meeting of the board of county commissioners after said notices shall have been posted as aforesaid, said board shall proceed to hear and determine said petition unless said hearing is for good cause continued until the next

meeting; and said board shall on the hearing of said petition also hear any remonstrance against the proposed change; and if on the hearing it shall appear to the said board that two-thirds of the qualified electors of said town or village in good faith signed said petition for change of name and desired the same, then the said board shall order said name to be changed as prayed for.

Record.

(760) § **4.** Said order of the board shall thereupon be entered of record, giving the name of said town or village as set forth in said petition, the new name given, the time when the change shall take effect, which shall not be less than thirty days thereafter, and directing that notice of said change shall be published in at least one newspaper published in said county, if any, and if there is no newspaper published in said county, then said notice shall be published by posting the same for four weeks on the front door of the court house where the last term of the district court of the said county was held.

Filing proof.

(761) § **5.** The ordinary proof of such publications shall be filed in the office of the county clerk or county auditor and shall be by him filed for preservation; and on the day fixed by the board as aforesaid the change shall be complete: *Provided*, That whenever the name of any town or village shall be changed by order of the provisions of this act the county clerk or county auditor shall immediately notify the register of deeds, who shall note the change of name upon the plat of said town or village with the date thereof.

Costs.

(762) § **6.** In all cases arising under the provisions of this act, where there is no remonstrance or opposition to said petition, the petitioners shall pay all costs; but in all other cases costs shall abide the result of the proceeding and be taxed to either party in the discretion of the board, or divided equitably between the parties.

ARTICLE 5.—CHANGING WARDS.

SECTION.
1. Who may petition.
2. When council may order change.
3. Plats and records; corporation attorney to change.
4. Duty of clerk.
5. Manner of holding election in new ward.

Who may petition.

(763) § **1.** When a petition shall be presented to the mayor and council of any town or city incorporated under any special or general act of the Territorial Legislature, signed by a majority of the legal voters of said town or city, the majority to be determined by the number of names on the poll list of the last regular election, praying for a change in the name, number or boundary of wards of said town or city, the council of such corporation shall at once cause to be published in a weekly newspaper of the town or city in at least three issues a notice of the day and hour together with the place of meeting at which they will consider such petition.

When council may order change.

(764) § **2.** If it shall appear to the council that the change petitioned for is desirable and for the best interests of the town or

city, the council may by a majority vote of all the members elect order the change desired, but no such change shall take effect until the next regular election.

Plats and records, corporation attorney to change.

(765) § **3.** The council shall order the corporation attorney to cause such needful changes in papers, plats and matters of record as the change made may demand.

Duty of clerk.

(766) § **4.** It shall be the duty of the town or city clerk to make such changes in assessment lists as the change in wards necessitates.

Manner of holding election in new ward

(767) § **5.** Ten days before the next regular election the council shall designate the proper polling place or places for the new ward or wards, appoint judges, clerks, and make all necessary provisions for holding the election in the new ward or wards, naming the several officers to be chosen.

ARTICLE 6.—LOCATING AND VACATING STREETS AND ALLEYS.

SECTION.
1. Power to open, improve and vacate.
2. Petition.
3. Judge to appoint commission to appraise damages.
4. Duty of commissioners; damages and costs assessed against property.

Powers to open, improve and vacate streets and alleys.

(768) § **1.** Any city, town or village organized under and by virtue of a special act or charter or under and by virtue of any general law of the Territory of Oklahoma is hereby authorized and empowered by and through its proper municipal officers to lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings therein and to keep them in repair and to vacate the same.

Petition.

(769) § **2.** Whenever a majority of the resident owners of real estate situated in any block or subdivision of any city or incorporated town or village in the Territory of Oklahoma shall be desirous of locating an alleyway through such block or subdivision when said block or subdivision contains no alleyway, they shall after having given notice of their intention so to do by publishing notice thereof in a newspaper printed and published in the city or incorporated town or village wherein said block or subdivision is situated for three consecutive weeks once in each week prior thereto, present their application in writing to the judge of the district court of the county wherein said city or incorporated town or village is located, describing the proposed location of the proposed alleyway.

Judge to appoint commission to appraise damages.

(770) § **3.** Upon the presentation to him of the said application, together with due proof of publication of the notice required in the preceding section, the judge shall appoint three commissioners to appraise the damages, if any, to the property in the block or subdivision wherein said alleyway is sought to be located. Said commissioners in their appraisement may and shall take into consideration and offset any advantage to abutting property against the damages thereto.

Duty of commissioners, damages and costs assessed against property.

(771) § **4.** Said commissioners shall thereupon locate said alleyway and make their return forthwith to said court, which

return shall contain a plat of the block or subdivision showing the location of the proposed alleyway, the statement of the damages to each lot or parcel of land in said block or subdivision, together with the aggregate amount of damages, and if the said location be granted by the court said damages and all costs of the proceedings shall be entered up against said block or subdivision and be a first lien thereon against each lot or parcel in proportion to the assessed valuation thereof by the last assessment next preceding the date of the granting of said order, and shall be by the clerk of said court certified to the county clerk of the county in which said city or incorporated town or village is situated, who shall in making out the duplicate assessment and tax of said county next thereafter enter said sums therein in a seperate column opposite the description of the property against which the taxes so remain unpaid, and such taxes shall be collected in the same manner and by the same person as the general taxes of said county are collected; and shall when so collected be paid over to the person entitled thereto.

ARTICLE 7.—WATER WORKS AND FIRE APPARATUS.

SECTION.
1. Water works and fire alarms.
SECTION.
2. Act, how to be construed.

Water works and fire alarms.

(772) § **1.** All towns, cities and municipal corporations in this Territory having a population of one thousand inhabitants or more are hereby authorized and empowered to purchase, erect, lease, rent, manage and maintain any system or part of system of water works, hydrants and supply of water, telegraphing fire signals or fire apparatus that may be of use in the prevention and extinguishment of fires; and to pass all ordinances penal or otherwise that shall be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected. The common council or board of trustees of such city or municipal corporation are hereby empowered and authorized to assess, levy and collect taxes for the purposes aforesaid, and to do all acts necessary to carry such lease and contracts of purchase, erection or maintenance into effect, and to pay the stipulated rent or contract prices for the property so leased, purchased, erected or to be maintained, excepting however that any such lease or contracts for purchase, erection or maintenance which shall stipulate for an annual payment greater than an annual levy of five mills on each dollar of the assessed valuation of such city or municipal corporation shall not be authorized until the contract providing therefor shall first have been submitted to a vote of the people of such city or municipal corporation at any general or special election and ratified by a majority of the voters of said city or municipal corporation voting at such election.

Act, how to be construed.

(773) § **2.** This act shall not be construed to modify or affect the power of any city or town or the powers of the common council or board of trustees thereof as authorized and granted by the charters of such cities or towns or the laws under which they were

incorporated, where said charter or law shall have expressly given to such city the power to lease, rent or maintain the property described in this act.

ARTICLE 8.—ROAD TAXES IN CITIES OR TOWNS.

SECTION.
1. County treasurer to turn over certain funds to city or town treasurer.

County treasurer to turn over certain funds to city or town treasurer.

(774) § **1.** All road taxes collected as personal taxes from residents of any incorporated city or town, and all road taxes collected on account of real or personal property situated within any incorporated city or town, by the treasurer of the county in which such city or town is located, shall be turned over quarterly by such treasurer to the treasurer of such incorporated city or town, to be expended under the direction of the city council of such city or of the board of trustees of such town, as the case may be, in the improvements of the streets or bridges of such city or town or of the roads approaching thereto.

ARTICLE 9.—TOWN SITES LOCATED ON PUBLIC LAND.

SECTION.
1. Town site, who make entry.
2. Entry fee, money for, how raised.
3. Disposition of town property.
4. Persons making entry to transfer to claimants.
5. Expenses of entry and claims.
6. Publication of notice of entry.
7. Same.
8. Statement of claimants to be recorded.
9. Conflicting claims, how treated.
10. Extent of ground that may be claimed.
11. Expenses, certain to be paid by claimant.
12. Deeds to be given.
13. Unclaimed lands to be conveyed to board of education.
14. Who shall act in absence of probate judge.
15. Unclaimed lands shall be appraised.
16. Puqlic sale of unclaimed lands.
17. Bids; private sale.
18. Purchaser shall pay for deed.
19. Proceeds of sale, how applied.
20. Disposition of surplus.
21. Expiration of term of office of person making entry of town site.
22. Appeals from townsite commissioners to district court.

Townsite, who may make entry.

(775) § **1.** Whenever any portion of the public lands of the United States have been or shall be settled upon and occupied as a townsite, and therefore not subject to private entry under the agricultural pre-emption laws, it shall be lawful and the duty, whenever requested by a majority of the occupants or owners of the lots within the limits of the town, for the corporate authorities of the town if incorporated, and if not incorporated then for the judge of the probate court of the county in which such town may be situated, to enter at the proper land office the land so settled upon and occupied, and hold the same in trust for the several use and benefit of the occupants thereof and those holding by deed or otherwise, according to their respective interests

Entry fee, money for, how raised.

(776) § **2.** If at any time the petition is presented as provided for in the preceding section there is not in the treasury of the town moneys sufficient to pay for the land settled upon and occupied, the corporate authorities or the probate judge, as the case may be, may raise by subscription or otherwise sufficient funds to pay for

said lands and costs of entering the same, and any and all sums so advanced for such purpose shall be repaid in the manner provided for in section 779.

Disposition of town property

(777) § **3.** When the corporate authorites of any city or town, or the judge of the probate court of any county in this territory in which any city or town may be located, shall have entered at at the proper land office the land or any part thereof so settled and occupied as the site of such city or town, pursuant to and by virtue of the act of Congress of the United States, entitled "an act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and acts amendatory thereto, it shall be the duty of such corporate authorities or judge of the probate court, his or their successors, to dispose of the trust so created and conferred by said act of congiess in the manner hereinafter specified.

Persons making the entry to transfer to claimants.

(778) § **4.** Any such corporate authorities or judge of the probate court holding the title to any such lands in trust as declared in said act of congress shall, subject to the provisions of this act, by a good and sufficient deed of conveyance grant and convey the title to each and every block, lot, share or parcel of the same to the person, persons, associations or corporations who shall occupy or possess or be entitled to the right of possession or occupancy thereof, according to the several rights and interests of the respective claimants in or to the same as they existed in law or equity at the time of the entry of such lands, or to the heirs or assigns of such claimants. Every such deed of conveyance made by such corporate authorities or judge of the probate court pursuant to the provisions of this act shall be so executed and acknowledged as to admit the same to be recorded.

Expenses of entry and claims.

(779) § **5.** Immediately upon making the entry, and during the sixty days thereafter, such corporate authorities or probate judge shall proceed to itemize and pass upon the expenses of procuring said entry to be made, including the moneys paid at the land office for such entry, the costs of surveying and platting the town site, of attorney's fees, witness fees, recording plat and all other expenses necessary and incident to procuring the entry and perfecting the title, and for this purpose shall give notice to all persons having any claims for moneys advanced or services rendered to present and file a certified statement of the same within said sixty days, such notice to be given promptly after making of the entry, and to be by publication for three weeks in some newspaper published in the county wherein the town site is located, or if none be so published then in the newspaper published nearest thereto. And any person having or making any such claim who shall at the expiration of said sixty days have failed to file such verified statement of account shall be thereafter barred from presenting the same or recovering thereon. Upon the receipt of such verified statements of accounts they shall be duly filed by the said corporate authorities or judge of the probate court, and either allowed, rejected or allowed in part as in the judgment of such corporate authorities or judge of the probate court may be just and right, due notice of such allowance, rejec-

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tion or allowance in part to be at once given to the person having filed the verified statement. Any person filing such verified statement or any lot owner feeling aggrieved at the decision of such corporate authorities or judge of the probate court making such allowance, rejection or allowance in part of any claim so filed, may within thirty days after the decision appeal therefrom to the district court of the district wherein such city or town may be located, such appeal to be taken upon notice to such corporate authorities or judge of the probate court in the same manner and subject to the same restrictions as appeals from the board of county commissioners.

Publication of notice of entry and claims awarded.

(780) § **6.** Immediately upon the expiration of sixty days after the first publication of said notice as hereinbefore provided, at the proper land office, the corporate authorities or judge of the probate court entering the same, his or their successors, shall give public notice thereof by publishing such notice in a newspaper published in the county in which such city or town shall be situated, or in case there shall be no newspaper published in such county then in the newspaper published nearest the said city or town—and in the latter case where there is no newspaper published in said county, copies of said notice shall also be posted in not less than ten conspicuous places within the limits of said county; such notice shall be published not less than once a week for six consecutive weeks and shall contain an accurate description of the lands entered as the same is stated in the certificate of entry, and shall also contain a statement of the several amounts awarded and allowed for the expenses of procuring the entry and which will be assessed against the land constituting the town site in executing the deeds therefor.

Same.

(781) § **7.** Such notice provided for in section 779 shall direct that each and every person, association or corporation claiming to be an occupant or to have, possess or be entitled to the right of possession or occupancy of such lands or any lots, share or parcel thereof, shall within ninety days from the date of the first publication or posting of such notice, in person or by his, her or their or its duly authorized agent or attorney, sign a statement in writing, containing an accurate description of the particular lot, lots, parcel or parcels of land in which he, she, they or it claim to have an interest; and the specified right, interest or estate so claimed therein, the character and value of the improvements thereon, and how occupied or possessed by such claimant, and for how long a time, and any other matter or thing illustrating or supporting such claimant's right to a deed of the tract so described, such statement to be verified by the affidavit of the party or parties signing the same.

Statement of claimants to be recorded.

(782) § **8.** The statement of the claimant provided for in the preceding section shall, together with the accompanying affidavits, be delivered to the said corporate authorities or judge of the probate court within the time specified in said notice, and shall be by him or them filed and an abstract of the contents thereof, with name of claimant and date of filing, entered in a well bound book to be kept for such purpose, which shall be known as "the record

of claimants' statements." And all persons failing to furnish such statement as herein required within the time specified in said notice, except minors and insane persons, shall be forever barred of the right of claiming or recovering such lands or any interest or estate therein or any part or parcel thereof.

Conflicting claims, how treated.

(783) § **9.** Should any one or more persons, associations or corporations claim adversely the title to any lot or lots, parcel or parcels of land within the boundaries of such city or town, the party in possession, or if neither party be in actual possession, then the party first filing his application, shall be *prima facie* entitled to a deed of conveyance, and the party or parties claiming adversely shall within said ninety days after the first publication of the notice provided for in section 779, file with the corporate authorities or judge of the probate court a sworn statement as provided in section 781, and at the same time a notice that he, she or it contests the statement and application for deed hitherto made, and expects at once to begin an action in the district court to determine his, her or its right to the property; whereupon the corporate authorities or judge of the probate court must suspend action on such disputed lot or parcel of ground until a proper certificate be furnished that the dispute has been decided or abandoned. Such party or parties claiming adversely, and having filed such notice of contest, must within ten days thereafter begin action in the district court for the purpose of determining the rights of all parties, in which action all persons claiming adversely to the plaintiff or plaintiffs may be joined as parties defendant, and if not so joined shall have the right to intervene. For the purposes of this section an action shall be deemed begun when a complaint has been filed in the hands of the clerk of the court and a summons placed in the hands of a sheriff for the service: *Provided*, That personal service must be made or service by publication begun within sixty days thereafter. Upon the presentation of the clerk's certificate that no complaint has been filed and no action begun in accordance with the provisions of this section, the party aforesaid having the *prima facie* right shall be entitled to a deed of conveyance; and in case of action begun the party recovering therein shall be entitled to a deed of conveyance upon presentation of a certified copy of the final judgment or decree of the court in such action to the corporate authorities or judge of the probate court. Upon receiving the certificate aforesaid or certified copy of judgment or decree the same shall be filed and an abstract of the contents entered in the record of claimant's statements; and the said corporate authorities or judge of the probate court shall thereupon execute deeds of conveyance to the party or parties entitled to receive the same. All persons except minors and insane persons failing to file their notice of contest and to bring their action within the time herein prescribed shall be thereafter forever barred from setting up or asserting any claim, right or title to such lot or lots, parcel or parcels of lands so adversely claimed.

Extent of ground that may be claimed.

(784) § **10.** The amount of ground which any one claimant shall be entitled to receive a deed for in a single tract under the pro-

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visions of this act, unless said claimant or his grantors were in the actual peaceable possession of the same prior to its entry as herein provided for and had improved the same and is still in the occupancy thereof, may equal but not exceed two acres in extent: *Provided*, That such ground be exclusively occupied by or in the possession of such claimant and have improvements thereon of not less than two hundred dollars in value. Such claimant shall also be entitled to a deed for each additional lot not exceeding in area twenty-five hundred square feet on which he may have substantial improvements of not less than one hundred dollars in value. When any claimant shall make application for a deed to more than one tract or parcel he shall file in addition to his own affidavit as required by this act the affidavits of at least two disinterested witnesses showing the nature, character and actual cash value of the improvements upon such additional lot or lots so claimed.

Expenses, certain to be paid by the claimant

(785) § **11.** Each person shall upon filing an applicant's statement as herein provided be required to pay to the said corporate authorities or judge of the probate court his proper and due proportion of the money lawfully expended in perfecting the title and procuring the entry of said land, including all streets, alleys, public grounds and parks, and all expenses necessarily incurred in making the survey and plat, for recording plat and publishing notices as required by this act, such proportion to be determined by the relation which the value, extent and area of such claimant's land bears to the whole amount of land claimed during the ninety days, and in addition thereto the sum of two dollars for the principal tract claimed and fifty cents for each additional lot of two thousand five hundred square feet claimed by the same person or persons, association or corporation, as a fee for executing the trust, taking affidavit, filing and abstracting statements and affidavits and executing and acknowledging the deed as required by this act, which charges shall be in full payment for all expenses attending the execution of the trust. In case of appeals provided for in section 779, the sum of one dollar shall be paid for certified copy of statement of account filed and certificate of decision and award made; and pending such appeal and the review by the district court of any award or allowance of claims for expenses in procuring the entry of land, as provided for in section 779, the corporate authorities or judge of the probate court must in making and apportioning expenses take care that their estimate be sufficient to meet the same and any possible increase made by the appellate tribunal, any surplus resulting from such estimate to be applied as herein provided. In case of any contest, and deposit of money as in this section provided by both parties, the corporate authorities or judge of the probate court shall after final judgment and decree refund to the unsuccessful party or parties all money so advanced by such party or parties, except the sum of one dollar, which shall be retained as fees for taking and filing affidavits, statements, notice of contest, certified copy of decree, etc.

Deeds to be given

(786) § **12.** After the expiration of ninety days from the date of the first publication of the notice required by section 779 the

corporate authorities or judge of the probate court shall proceed to award the lot or lots, parcel or parcels of land as provided in this act, and for that purpose shall as soon as practicable and as near as practicable in the order of the time of the filing of claimant's statements examine each and every claim, read proofs filed and hear additional testimony if deemed advisable, and if the claim should be found to comply with the provisions of this act, and no adverse claim and notice of contest shall have been filed, the said corporate authorities or judge of the probate court shall proceed forthwith to make such claimant or claimants a good and sufficient deed of conveyance for such lot or lots or parcels of land so claimed.

Unclaimed lands to be conveyed to board of education.

(787) § **13.** When any lots or parcels of land within the limits of any city or town shall remain unclaimed after the expiration of the time allowed by this act for the filing of claimants' statements, it shall be the duty of the corporate authorities or judge of the probate court to convey the lots or parcels of land so remaining unclaimed by good and sufficient deed to the board of education of such city or town, if there be such body qualified to take the title to real property, to be taken and disposed of by such board of education for school purposes and for the exclusive use and benefit of the school district in which such city or town may be situated, under such directions and limitations as are provided by this act.

Who shall act in the absence of probate judge.

(788) § **14.** If there be no such board of education legally authorized to take the title to real property, then the corporate authorities or judge of the probate court shall sell and dispose of the said unclaimed lots or parcels of land so remaining for school purposes, and for the exclusive use and benefit of the school district in which said city or town may be situated under the directions, limitations and provisions contained in this act.

Unclaimed lands shall be appraised.

(789) § **15.** The board of education, corporate authorities or judge of the probate court aforesaid shall appoint three competent and suitable freeholders of such city or town a board of appraisers whose duty it shall be to make a careful inspection and examination of all the unclaimed lots or parcels of land aforesaid, and upon each of such lots or parcels of land they shall affix a reasonable and just valuation, and upon the completion of their appraisement they shall make and return a full and complete report of their proceedings and appraisement to the board of education, corporate authorities or judge of the probate court, which said report shall contain a full schedule of each and every lot or parcel of of land remaining unclaimed, giving an exact description of said lots by their numbers and the number of the block, and all parcels of land not so numbered shall be described by metes and boundaries, and upon each lot or parcel of land separately they shall designate the valuation thereof as fixed by their appraisement; said appraisement and report shall be subscribed and sworn to by at least two of said appraisers.

Public sale of unclaimed lands.

(790) § **16.** The board of education, corporate authorities or judge of the probate court shall within thirty days after the receipt of the aforesaid report of said board of appraisers give public no-

tice that all such unclaimed lots or parcels of land, or so much thereof as may be considered for the best interest of the school district, will be sold at public auction to the highest bidder for cash; said notice to be given by publication in not less than three newspapers of general circulation in the Territory and for a period of not less than thirty days immediate prior to such sale, specifying the time and place when said unclaimed lots or parcels of land will be sold, together with a description of the same as returned by the board of appraisers.

Bids; private sale.

(791) § **17.** At the time and place appointed in said notice the board of education, corporate authorities or judge of the probate court shall offer for sale at public auction subject to competitive bids all the lots and parcels of land or so much thereof as may be considered for the best interest of the school district, returned by the report of said board of appraisers as unclaimed: *Provided*, That no bid shall be received or lot or parcel of land sold for a less sum than the appraised valuation; and such sale shall continue open from day to day until all such lots or parcels of land, or so much thereof as may be considered for the best interest of the school district, shall have been offered for sale. Any lots or parcels of land remaining unsold at the close of such sale for want of bids equal to the appraised valuation thereof may thereafter be sold at private sale by said board of education, corporate authorities or judge of probate court for a sum of money not less than the appraised valuation thereof, and not otherwise.

Purchaser shall pay for deed.

(792) § **18.** Any purchaser at such sale, in addition to the amount of purchase money paid for any lot, lots or parcel of land, shall pay to the board of education, corporate authorities or judge of probate court the sum of two dollars as a fee for making, executing and acknowledging a deed of conveyance therefor, and all such lots or parcels of land purchased by any one person may be conveyed to such purchaser in one deed, which fee shall be in full for all charges of conducting sale, giving notice, appointing appraisers, etc,

Proceeds of sale, how applied.

(793) § **19.** The proceeds derived from the sale of such lots or parcels of unclaimed land, after first paying the expenses of advertising, printing and a per diem of not more than three dollars per day to each member of the board of appraisers for the days actually and necessarily employed by them in making such appraisement and report as aforesaid, and other expenses actually and necessarily incurred in the proper conduct and management of such sale, shall be immediately turned over at the close of said sale by the board of education, corporate authorities or judge of the probate court to the treasuser of the school district, and by said treasurer placed to the credit of the school house fund of said school district, only to be disbursed and applied in the payment of outstanding bonds, warrants or other indebtedness against said school district, contracted or created in the erection or construction of school houses, procuring grounds or appurtenances therewith, if any such bonds, warrants or other indebtedness exists otherwise to be applied and placed to the credit of the general school fund of the school district.

(794) § **20.** In case there should be found any surplus on hand over and above receipts for fees and awards for expenses arising from the conveyances of lots as provided in section 785, then such surplus shall so soon as ascertained by the corporate authorities or the judge of the probate court be accounted for and turned over to the treasurer of the school district wherein such city or town may be situated; to be by such school district treasurer placed to the credit of the school house fund, then to be disbursed and applied as herein provided for the disbursement of proceeds derived from the sale of unclaimed lots or parcels of land.

Surplus, how disposed of.

(795) § **21.** Whenever the term of office of any corporate authorities or judge of the probate court having made entry of a townsite shall expire, or he or any one or more of said corporate authorities shall resign or be removed from office, he or they shall turn over all books and papers relative to such entry to his or their successor or successors in office, with full report of the condition of the trust and receipts and disbursements thereunder, and thereafter the said trust shall be executed in every particular by such successor or successors. Any wilful violations of the provisions of this act by the corporate authorities or judge of the probate court shall be held and considered a misdemeanor; any such corporate authorities or judge of the probate court wilfully making out a deed to any party not entitled to receive the same shall be deemed guilty of a misdemeanor; and any such corporate authorities or judge of the probate court wilfully misappropriating funds received by them in the execution of this trust shall be held guilty of embezzlement.

Expiration of term of office of person making entry of townsite

(796) § **22.** That in all cases heretofore or hereafter tried before the boards of townsite commissioners in Oklahoma appointed by the Secretary of the Interior of the United States, appeals from the decisions of such boards may be taken to the district court of the county in which such decisions are made in the same manner as is provided by law for appeals from justices of the peace, and the district court may on motion compel the boards of commissioners to transmit the papers and a transcript in each case appealed: *Provided*, That in all cases in which decisions have herebefore [heretofore] been made by such boards such appeals shall be taken within ninety days after the taking effect of this act, and in all other cases within thirty days from the date of the decision by the townsite commissioner.

Appeals from townsite commission to district court.

This act shall be in force and effect from and after the final adjournment of the present session of the Legislative Assembly.

CHAPTER XVII.—CONTRACTS.

ARTICLE.
1. Nature of contract.
2. Manner of creating contracts.
3. Interpretation of contracts.
4. Unlawful contracts.
5. Extinction of contracts.
6. Loan of money.
7. Hiring of real and personal property.

ARTICLE 1.—NATURE OF CONTRACT.

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2. Requisites of a contract.
3. Who may make contracts.
4. Capacity of certain classes.
5. Identity of parties.
6. Beneficiary may enforce.
7. Consent to a contract.
8. If consent is not free.
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40. Effect of illegality.
41. Executed or executory consideration.
42. Executory, how determined.
43. Measure of value.
44. Exclusive method impossible.
45. Same; presumption; burden of proof.

Contract defined.

(797) § **1.** A contract is an agreement to do or not to do a certain thing.

Requisites of a contract.

(798) § **2.** It is essential to the existence of a contract that there should be:

First. Parties capable of contracting.

Second. Their consent.

Third. A lawful object; and,

Fourth. Sufficient cause or consideration.

Who may make a contract.

(799) § **3.** All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

Capacity of certain classes.

(800) § **4.** Minors and persons of unsound mind have only such capacity as defined by sections 2509 (omitting 2513) to 2525 inclusive of the Dakota code.

SECTION 2509. Minors are:

First. Males under twenty-one years of age.

Second. Females under eighteen years of age.

The periods thus specified must be calculated from the first minute of the day on which persons are born, to the same minute of the corresponding day completing the period of minority.

SECTION 2510. All other persons are adults.

SECTION 2511. A child conceived, but not born, is to be

deemed an existing person so far as may be necessary for its interest in the event of its subsequent birth.

SECTION 2512. Persons of unsound mind within the meaning of this code, are idiots, lunatics, and imbeciles.

SECTION 2514. A minor cannot give a delegation of power, nor, under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control.

SECTION 2515. A minor may make any other contract than as above specified in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this chapter, and subject to the provisions of the chapter on marriage, and on master and servant.

SECTION 2516. In all cases other than those specified in sections 2517 and 2518, the contract of a minor, if made while he is under the age of eighteen may be disaffirmed by the minor himself, either before his majority or within one year's time afterwards; or in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received or paying its equivalent with interest.

SECTION 2517. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

SECTION 2518. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

SECTION 2519. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

SECTION 2520. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission as provided in the chapter of rescission of this code.

SECTION 2521. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor designate any power, nor waive any right, until his restoration to capacity is judicially determined. But if actually restored to capacity, he may make a will, though his restoration is not thus determined.

SECTION 2522. A minor, or a person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, in like manner as any other person.

SECTION 2523. A minor or person of unsound mind, cannot be subject to exemplary damages, unless at the time of the act he was capable of knowing that it was wrongful.

SECTION 2524. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full

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age, except that a guardian must be appointed to conduct the same.

SECTION 2525. Indians resident within this Territory have the same rights and duties as other persons, except that:

First. They cannot vote or hold office, and that:

Second. They cannot grant, lease or incumber Indian lands, except in the cases provided by special laws.—Dakota Code,]

Identity of parties.

(801) § **5.** It is essential to the validity of the contract, not only that the parties should exist, but that it should be possible to identify them.

Beneficiary may enforce

(802) § **6.** A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

Consent to a contract

(803) § **7.** The consent of the parties to a contract must be:

First. Free.

Second. Mutual; and,

Third. Communicated by each to the other.

If not free, rescinded.

(804) § **8.** A consent which is not free, is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission.

Conditions limiting freedom of consent.

(805) § **9.** An apparent consent is not real or free when obtained through:

First. Duress.

Second. Menace.

Third. Fraud.

Fourth. Undue influence; or,

Fifth. Mistake.

Construction

(806) § **10.** Consent is deemed to have been obtained through one of the causes mentioned in the last section, only when it would not have been given had such cause not existed.

Kind of duress.

(807) § **11.** Duress consists in:

First. Unlawful confinement of the person of the party, or of husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband or wife.

Second. Unlawful detention of the property of any such person; or,

Third. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly, harrassing or oppressive.

Forms of menace.

(808) § **12.** Menace consists in a threat:

First. Of such duress as is specified in the first and third subdivisions of the last section.

Second. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,

Third. Of injury to the character of any such person.

Kinds of fraud.

(809 § **13.** Fraud is either actual or constructive.

Actual fraud.

(810) § **14.** Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

First. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

Second. The positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believe it to be true.

Third. The suppression of that which is true, by one having knowledge or belief of the fact.

Fourth. A promise made without any intention of performing it; or,

Fifth. Any other act fitted to deceive.

Constructive fraud defined.

(811) § **15.** Constructive fraud consists:

First. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,

Second. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

Actual fraud a question of fact.

(812) § **16.** Actual fraud is always a question of fact,

Kinds of undue influence.

(813) § **17.** Undue influence consists:

First. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.

Second. In taking an unfair advantage of another's weakness of mind; or,

Third. In taking a grossly oppressive aud unfair advantage of another's necessities or distress.

Mistake divided.

(814) § **18.** Mistake may be either of fact or of law.

Mistake of fact.

(815) § **19.** Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

First. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,

Second. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

Mistake of law.

(816) § **20.** Mistakes of law constitute a mistake within the meaning of this article only when it arises from:

First. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

Second. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

Foreign laws.

(817) § **21** Mistake of foreign laws is a mistake of fact.

Mutual consent defined.

(818) § **22.** Consent is not mutual unless the parties all agree upon the same thing in the same sense. But in certain cases, defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

How communicated.

(819) § **23.** Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

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Special mode of acceptance.

(820) § **24.** If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

Transmission of consent begun.

(821) § **25.** Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

Acts which are an acceptance

(822) § **26.** Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

Acceptance must be absolute.

(823) § **27.** An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character, which the proposer can separate from the rest, and which will include the person accepting. A qualified acceptance is a new proposal.

Revocation of proposal.

(824) § **28.** A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

Revocations classed.

(825) § **29.** A proposal is revoked:

First. By the communication of notice of revocation by the proposer to the other party in the manner prescribed by sections 818 and 820, before his acceptance has been communicated to the former.

Second. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance.

Third. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

Fourth. By the death or insanity of the proposer.

Subsequent consent.

(826) § **30.** A contract which is voidable, solely for want of due consent may be ratified by a subsequent consent.

Acceptance of benefit includes obligations.

(827) § **31.** A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it so far as the facts are known, or ought to be known to the person accepting.

Object of a contract

(828) § **32.** The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

Requisites of the object.

(829) § **33.** The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time this contract is to be performed.

Impossibility defined

(830) § **34.** Everything is deemed possible except that which is impossible in the nature of things.

Single unlawful object voids the contract.

(831) § **35.** Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void

Lawful part valid

(832) § **36.** Where a contract has several distinct objects, of which one at least is lawful and one at least is unlawful in whole or in part, the contract is void as to the latter, and valid as to the rest.

Good consideration defined.

(833) § **37.** Any benefit conferred, or agreed to be conferred

upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise. Chap. 17.

Moral or legal consideration, how far good

(834) § **38.** An existing legal obligation resting upon the promisor, or a moral obligation, originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

Consideration must be lawful.

(835) § **39.** The consideration of a contract must be lawful within the meaning of section 879.

Effect of illegality.

(836) § **40.** If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

Executed or executory consideration.

(837) § **41.** A consideration may be executed or executory, in whole or in part. In so far as it is executory, it is subject to the provisions of sections 827, 828, 829, 830 and 831.

Executory, how determined.

(838) § **42.** When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specific standard.

Measure of value.

(839) § **43.** When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

Exclusive method impossible; contract void.

(840) § **44.** Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

Same, presumption, burden of proof.

(841) § **45.** First. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

Second. A written instrument is presumptive evidence of a consideration.

Third. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

ARTICLE 2.—MANNER OF CREATING CONTRACTS.

SECTION.
1. Express or implied.
2. Express contract.
3. Implied contract.
4. What contracts may be oral.
5. Oral contracts may be enforced.
6. Contracts that must be written; statute of frauds.
7. Writing excludes oral negotiations.
8. Contract takes effect upon delivery.
9. Applies to all contracts.
10. Seal affixed how.
11. Seals abolished.

Express or implied.

(842) § **1.** A contract is either express or implied.

Express contract.

(843) § **2.** An express contract is one, the terms of which are stated in words,

Implied contract.

(844) § **3.** An implied contract is one, the existence and terms of which are manifested by conduct.

What contracts may be oral.

(845) § **4.** All contracts may be oral, except such as are specially required by statute to be in writing.

Oral contract may be enforced against fraud

(846) § **5.** Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

Statute of frauds, contracts that must be written.

(847) § **6.** The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent:

First. An agreement that, by its terms, is not to be performed within a year from the making thereof,

Second. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in section 4277.

[SECTION 4277. A promise to answer for the obligation of another, in any of the following cases, deemed an original obligation of the promisor, and need not be in writing:

First. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in the consideration of such promise.

Second. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstance such as to render the party making the promise the principal debtor, and the person in whose behalf it is made his surety.

Third. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgmentt obtained upon the antecedent obligation, or upon a consideration beneficial to the promiser, whether moving from either party to the antecedent obligation, or from another person.

Fourth. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale.

Fifth. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument —Dakota Code.]

Third. An agreement made upon consideration of marriage, other than a mutual promise to marry.

Fourth. An agreement for the sale of goods, chattels, or things in action, at a price not less than fifty dollars, unless the buyer accept or receive part of such goods and chattels, or the evidences or some of them, of such things in action, or pay at the some

part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale was made, is a sufficient memorandum.

Fifth. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

Writing excludes oral negotiations or stipulations.

(848) § **7.** The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument.

Contract takes effect upon delivery.

(849) § **8.** A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

Applies to all contracts.

(850) § **9.** The provisions of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

Seal affixed, how.

(851) § **10.** A corporate or official seal may be affixed to an instrument by a mere impression upon paper or other material on which such instrument is written.

Seals abolished.

(852) § **11.** All distinctions between sealed and unsealed instruments are abolished.

ARTICLE 3—INTERPRETATION OF CONTRACTS.

SECTION.		SECTION.	
1.	Public and private contracts.	15.	Belief of promisor
2.	Effect to be given.	16.	Part subordinate to whole.
3.	Intention ascertained.	17.	Written and original parts control.
4.	Language governs	18.	Repugnancy, how reconciled.
5.	Intention ascertained from writing.	19.	Inconsistent words rejected.
6.	Error only to be disregarded.	20	Uncertainty, how interpreted.
7	Effect given to every part.	21.	Reasonable stipulations implied.
8	Several contracts to be taken together	22.	Necessary incidents implied.
9.	Interpretation favors validity.	23.	No time specified.
10	Words in ordinary sense.	24.	When time is essence.
11.	Technical words.	25.	Joint and several promise.
12.	Law of place.	26.	Singular number.
13.	Circumstances explain.	27.	Executed contract defined.
14	Restricted to intention of parties		

Same, rules of interpretation for public and private.

(853) § **1.** All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

Effect to be given.

(854) § **2.** A contract must be so interpreted as to give effect to the mutual intention of the parties, as it existed at the time of contracting, so far as the same is ascertainable and lawful.

Intention ascertained.

(855) § **3.** For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

Language governs

(856) § **4.** The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

Intention ascertained from writing if possible.

(857) § **5.** When a contract is reduced to writing, the inten-

tion of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this title.

Error only to be disregarded.

(858) § **6.** When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

Effect given to every part.

(859) § **7.** The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others.

Several contracts to be taken

(860) § **8.** Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

Interpretation favors validity.

(861) § **9.** A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect, if it can be done without violating the intention of the parties.

Words to be taken in ordinary sense

(862) § **10.** The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

Technical words.

(863) § **11.** Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

Law of place.

(864) § **12.** A contract is to be interpreted according to the law and usage of the place where it is to be performed, or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

Circumstances explain

(865) § **13.** A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

Restricted to intention of parties.

(866) § **14.** However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

Relief of promisor

(867) § **15.** If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

Part subordinate to whole

(868) § **16.** Particular clauses of a contract are subordinate to its general intent.

Written and original parts control.

(869) § **17.** Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

Repugnancy, how reconciled.

(870) § **18.** Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the

repugnant clause, subordinate to the general intent and purposes of the whole contract. Chap. 17.

Inconsistent words rejected

(871) § **19.** Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

Uncertainty, interpretation against party causing uncertainty.

(872) § **20.** In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party, except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

Reasonable stipulation implied

(873) § **21.** Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied in respect to matters concerning which the contract manifests no contrary intention.

Necessary incidents implied.

(874) § **22.** All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

No time specified, reasonable time to be given.

(875) § **23.** If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly, as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

When time is essence.

(876) § **24.** Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

Joint and several promise.

(877) § **25.** Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

Singular number

(878) § **26.** A promise made in the singular number, but executed by several persons, is presumed to be joint and several.

Executed contract defined.

(879) § **27.** An executed contract is one, the object of which is fully performed. All others are executory.

ARTICLE 4.—UNLAWFUL CONTRACTS.

SECTION.		SECTION.	
1.	What is unlawful.	6.	Restraints on legal proceedings.
2.	Certain contracts unlawful.	7.	Restraint of employment.
3.	Penalties void.	8.	Good-will excepted.
4.	Fixing damages void.	9.	Partners.
5	Exception.	10.	Restraint of marriage.

What is unlawful.

(880) § **1.** That is not lawful which is:

First. Contrary to an express provision of law.

Second. Contrary to the policy of express law, though not expressly prohibited; or,

Third. Otherwise contrary to good morals.

Certain contracts unlawful.

(881) § **2.** All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own

Chap. 17. fraud, or wilful injury to the person or property of another, or violation of law, whether wilful or negligent, are against the policy of the law.

Penalties void

(882) § **3.** Penalties imposed by contract for any non-performance thereof, are void. But this section does not render void such bonds or obligations, penal in form, as have heretofore been commonly used; it merely rejects and avoids the penal clauses.

Fixing damages void

(883) § **4.** Every contract, by which the amount of damages to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided by the next section.

Exception

(884) § **5.** The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

Restraint of legal proceedings.

(885) § **6.** Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

Restrain of employment.

(886) § **7.** Every contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than as provided by the next two sections, is to that extent void.

Good will excepted.

(887) § **8.** One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or a part thereof, so long as the buyer, or any person deriving title to the good-will from him carries on a like business therein.

Partners.

(888) § **9.** Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

Restraint of marriage.

(889) § **10.** Every contract in restraint of the marriage of any person, other than a minor, is void.

ARTICLE 5.—EXTINCTION OF CONTRACTS.

SECTION.		SECTION.	
1.	Contracts extinguished how.	10.	Contracts in duplicate.
2.	Rescission extinguishes contract.	11.	Abstinence from injury.
3	When party may rescind.	12.	Damages for deceit.
4.	Essential mistake.	13	Deceits classed.
5.	Rescission, how and when.	14.	Deceit upon the public.
6.	Oral contract altered by writing.	15.	Restoration.
7.	Written contract altered, how.	16.	Must be voluntary.
8.	Destruction by consent.	17.	Wilful acts and negligence.
9.	Destruction by alteration.	18.	Other obligations.

Contract may be extinguished, how.

(890) § **1.** A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this title.

Rescission extinguishes.

(891) § **2.** A contract is extinguished by its rescission,

Cases when party may rescind contract.

(892) § **3.** A party to a contract may rescind the same in the following cases only:

First. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

Second. If through the fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part.

Third. If such consideration becomes entirely void from any cause.

Fourth. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

Fifth. By consent of all the other parties.

Rescission allowed in essential mistake.

(893) § **4.** A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

Rescission, how and when.

(894) § **5.** Recission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

First. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

Second. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable, or positively refuses to do so.

Oral contract allowed by writing.

(895) § **6.** A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

Written contract altered, how.

(896) § **7.** A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

Destruction by consent.

(897) § **8.** The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

Destruction by alteration.

(898) § **9.** The intentional destruction, cancellation, or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

Contracts in duplicate not affected

(899) § **10.** Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

Abstinence from injury.

(900) § **11.** Every person is bound, without contract, to ab-

stain from injuring the person or property of another, or infringing upon any of his rights.

Damages for deceit

(901) § **12.** *One who wilfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.*

Deceits classed

(902) § **13.** A deceit, within the meaning of the last section, is either:

First. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

Second. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.

Third. The suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

Fourth. A promise, made without any intention of performing.

Deceit upon the public

(903) § **14.** One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

Restoration

(904) § **15.** One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

Must be voluntary.

(905) § **16.** The restoration required by the last section must be made without demand; except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

Wilful acts and negligence

(906) § **17.** Every one is responsible, not only for the result of his wilful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, wilfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the title on compensatory relief.

Other obligations.

(907) § **18.** Other obligations are prescribed by the first and second divisions of this code.

ARTICLE 6.—LOAN OF MONEY.

SECTION.
1. Loan of money defined.
2. Repayment.
3. Interest presumed.
4. Interest defined.
5. Annual rate of interest.
6. Legal rate of interest.
7. Highest rate of interest.
8. Discount may be taken.
9. Usury forfeits interest only.
10. Interest on judgments.
11. Interest on contracts after breach.

Loan of money defined

(908) § **1.** A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on loan for use.

(909) § **2.** A borrower of money must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent. Repayment must be made in current funds.

(910) § **3.** Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing. Loan presumes interest.

(911) § **4.** Interest is the compensation allowed for the use or forbearance, or detention of money, or its equivalent. Interest defined.

(912) § **5.** When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate. Annual rate of interest

(913) § **6.** Under an obligation to pay interest, no rate being specified, interest is payable at the rate of seven per centum per annum, and in the like proportion for a longer or shorter time; but in the computation of interest for less than a year, three hundred and sixty days are deemed to constitute a year. Legal interest seven per cent.

(914) § **7.** First. The highest rate of interest which it shall be lawful for any person to take, receive, retain, or contract for in this Territory, shall be twelve per cent per annum, and at the same rate for a shorter time. Highest rate twelve per cent.

Second. Unless, within the above limitation, there is an express contract in writing fixing a different rate, interest is payable on all moneys at the rate of seven per cent per annum, after they become due on any instrument of writing, except a judgment, and on moneys lent, or due on any settlement of accounts, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him.

(915) § **8.** The interest which would become due at the end of the term for which a loan is made, not exceeding one year's interest in all, may be deducted from the loan in advance if the parties thus agree. Discount may be taken.

(916) § **9.** A person taking, receiving, retaining, or contracting for any higher rate of interest than the rate of twelve per cent per annum, shall forfeit all the interest so taken, received, retained, or contracted for; it being the intent and meaning of this section not to provide a forfeiture of any portion of the principal. When a greater rate of interest has been paid than twelve per cent per annum, the person paying it, or his personal representative, may recover the excess from the person taking it, or his personal representative, in an action in the proper court. Usury forfeits interest only.

(917) § **10.** Interest is payable on judgments recovered in the courts of this Territory, at the rate of seven per cent per annum, and no greater rate, but such interest must not be compounded in any manner or form. Interest on judgments, seven per cent.

(918) § **11.** Any legal rate of interest, stipulated by a contract, remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation. Interest on contracts after breach.

SECTION.
1. Hiring defined.
2. Increase belongs to hirer.
3. Quiet possession.
4. Ordinary care.
5. Repairs by hirer.
6. Use for purpose for which let.
7. Hiring may be terminated by letter.
8. Same, by hirer.
9. Same, by other events.
10. Same, by death of party.
11. Proportionate part.
12. Dwelling made fit.
13. Lessee may repair.
14. Lease presumed for one year.

SECTION.
15. Rent term limits lodging
16. Continued possession.
17. Notice of termination.
18. Rent is payable.
19 Notice of proceeding to recover real property.
20. Part of room includes all
21. Obligation of one who lets personal property.
22. Ordinary expenses
23. Extraordinary expenses.
24. Return of thing hired.
25. Charter party.

Hiring defined

(919) § **1.** Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

Increase belongs to hirer

(920) § **2.** The products of a thing hired, during the hiring, belong to the hirer.

Quiet possession.

(921) § **3.** An agreement to let upon hire, binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

Ordinary care

(922) § **4.** The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

Repairs by hirer

(923) § **5.** The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

Use for purpose for which thing was let.

(924) § **6.** When a thing is let for a particular purpose, the hirer must not use it for any other purpose, and if he does, the letter may hold him responsible for its safety during such use, in all events, or may treat the contract as thereby rescinded.

Hiring may be terminated by letter.

(925) § **7.** The letter of a thing may terminate the hiring, and reclaim the thing before the end of the term agreed upon:

First. When the hirer uses, or permits a use of the thing hired, in a manner contrary to the agreement of the parties; or,

Second. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

Hiring may be terminated by hirer.

(926) § **8.** The hirer of a thing may terminate the hiring before the end of the term agreed upon:

First. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into a good condition, or repairing; or,

Second. When the greater part of the thing hired, or that part which was, and which the latter had, at the time of the hiring, reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

Terminated by other events

(927) § **9.** The hiring of a thing terminates

First. At the end of the term agreed upon

Second. By the mutual consent of the parties.

Third. By the hirer acquiring a title to the thing hired, superior to that of the letter; or,

Fourth. By the destruction of the thing hired.

Terminated by death of party.

(928) § **10**. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

Proportionate part

(929) § **11**. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

Dwelling must be made fit by lessor.

(930) § **12**. The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, except that the lessee must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

When lessee may repair

(931) § **13**. If within a reasonable time after notice to the lessor of delapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor; or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.

Lease presumed to be for one year.

(932) § **14**. A hiring of real property, other than lodgings, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

Rent term limits lodging

(933) § **15**. A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time of the rent, the hiring is presumed to be monthly.

Continued possession renews the lease

(934) § **16**. If a lessee of real property remains in posession thereof, after the expiration of the hiring and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year.

Renewal presumed unless notice of termination is given.

(935) § **17**. A hiring of real property, for a term not specified by the parties, is deemed to be renewed, as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

Rent is payable, when.

(936) § **18**. When there is no contract or usage to the contrary, the rent of agricultural and wild land is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The

rent for a hiring shorter than the periods herein specified is payable at the termination of the hiring.

Tenant must inform landlord in case of notice of proceeding to recover real property

(937) § **19.** Every tenant who receives notice of any proceeding to recover the real property occupied by him or the possession thereof must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction.

Part of room includes all.

(938) § **20.** One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues.

Obligations of one who lets personal property.

(939) § **21.** One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer, and not the natural result of its use.

Ordinary expenses borne by hirer

(940) § **22.** A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

Extraordinary expenses

(941) § **23.** If a letter fails to fulfill his obligations, as prescribed by section 939, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

Return of thing hired.

(942) § **24.** At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring, or if no particular place was so contemplated by them, at the place which it was at that time.

Charter-party.

(943) § **25.** The contract by which a ship is let is termed a charter-party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer.

CHAPTER XVIII.—CORPORATIONS.

ARTICLE.
1 The creation of corporations.
2. Corporate stock
3. Corporate powers.
4. Corporate records.
5. Dissolution of corporations.
6 Assessments of stocks.
7. Judgment and sale of franchise.
8. Examination of corporations.
9 Railroad corporations.
10. Wagon roads.
11. Insurance corporations.
12. Mining, manufacturing; etc.
13. Bridge corporations.
14. Religious, education, etc.
15. Agricultural fair.
16. Building and loan associations.
17. Banking and other loan corporations.
18. Existing corporations.
19. Unincorporated associations.
20. Duties of foreign corporations.

ARTICLE 1.—THE CREATION OF CORPORATIONS.

SECTION.
1. Corporations creatures of the law.
2. Corporations created by statute.
3 Power reserved.
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7. Public corporations.
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9. Articles of incorporation; officers.
10. Acceptance absolute.
11. Acceptance how proved.
12. Private corporations, for what purposes.
13. Religious corporations, power of to hold real estate limited.
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16. One-third of incorporators must be residents.
17. Certificate to issue.
18. Articles of incorporation to be recorded.
19. Copy of the articles as evidence.
20. Not necessary to prove incorporation when
21. Stockholders; members.
22. Stock of minor, insane person or decedent.
23. Married woman's share of stock.

(944) § **1**. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes. Corporations creatures of the law.

(945) § **2**. A corporation can only be created by authority of a statue. But the statue may be special for a particular corporation, or general for a number of corporations. Corporation created by statute.

(946) § **3**. Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislature. Power reserved

(947) § **4**. The due incorporation of any company, claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers, shall not be inquired to collaterally, in any private suit to which such *de facto* corporation may be a party; but such inquiry may be had, and action brought, at the suit of the Territory, in the manner prescribed in civil procedure. Incorporation cannot be attacked collaterally.

(948) § **5**. Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law; but the misnomer of a corporation in any written instrument does not invalidate the instrument if it can be reasonably ascertained from it what corporation is intended. Must have corporate name.

(949) § **6**. Corporations are either : Classes of corporations.

First. Public ; or,

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Second. Private.

Public corporations.

(950) § **7**. Public corporations are formed or organized for the government of a portion of the Territory. Such corporations are regulated by local statute.

Private corporations

(951) § **8**. Private corporations are formed for the purpose of religion, benevolence, education, art, literature, or profit; and all corporations not public are private.

Articles of incorporation, officers

(952) § **9**. The instrument by which a private corporation is formed is called "articles of incorporation," or "certificate of incorporation." And one-third of the officers of such corporations shall be residents of this Territory.

Acceptance absolute.

(953) § **10**. In order to constitute a private corporation, there must not only be a statutory grant of corporate authority, but an acceptance of that grant by a majority of the corporators, or their agents. The acceptance cannot be conditional or qualified.

Acceptance, how proved.

(954) § **11**. Except when otherwise expressly provided, the acceptance of a grant of corporate authority may be proved like any other fact.

Private corporations, for what purposes.

(955) § **12**. Private corporations can be formed by the voluntary association of three or more persons, upon complying with the provisions of this chapter, for the following purposes, namely; mining, manufacturing and other industrial pursuits; the construction or operation of railroads, wagon roads, irrigating ditches; for colleges, seminaries, churches, libraries, benevolent, charitable, and scientific associations; for conducting the business of insurance, banks of discount and deposit (but not of issue), and for loan, trust and guarantee associations: *Provided*, *however*, That no insurance company shall be incorporated under the provisions of this act except by the voluntary association of seven or more persons.

Religious corporations may hold certain amount of real estate.

(956) § **13**. No corporation or association for religious or charitable purposes shall acquire or hold real estate in this Territory, during the existence of the Territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporations or associations contrary hereto, shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

Contents of articles of incorporation.

(957) § **14**. Articles of incorporation must be prepared setting forth:

First. The name of the corporation.

Second. The purpose for which it is formed.

Third. The place where its principal business is to be transacted.

Fourth. The term for which it is to exist.

Fifth. The number of its directors or trustees, and the names and residences of such of them who are to serve until the election of such officers, and their qualifications.

Sixth. If there be a capital stock, its amount and the number of shares into which it is divided.

Railroad and wagon roads

(958) § **15**. The articles of incorporation of any railroad or wagon road must also state:

First. The kind of road intended to be constructed.

Second. The place from and to which it is intended to be run, and all the intermediate branches.

Third. The counties through which it is intended to be run.

Fourth. The estimated length and cost of the road.

One-third of incorporators must be residents.

(959) § **16.** The articles of incorporation must be subscribed by three or more persons, one-third of whom must be residents of this Territory, and acknowledged by each before some officer authorized to take and certify acknowedgments of conveyances of real property.

Certificate to issue on filing articles of incorporation.

(960) § **17.** Upon the filing of the articles of incorporation with the Secretary of the Territory, he shall issue to the corporation, over the great seal of the Territory, a certificate that the articles containing the required statement of facts have been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate by the name and for the purposes stated in said articles.

Articles to be recorded.

(961) § **18.** Upon the filing of any articles of incorporation, as in the last section is prescribed, the Secretary of the Territory shall cause the same to be recorded in a book to be kept in his office for that purpose to be called "the book of corporations," with the date of filing.

Copy of articles evidence.

(962) § **19.** A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the Secretary of the Territory, must be received in all courts and other places as *prima facia* evidence of the facts therein stated, and of the existence of such corporation.

Not necessary to prove incorporation

(963) § **20.** In all civil actions brought by or against ac orporation, it shall not be necessary to prove on the trial of the cause the existence of such corporation, unless the defendant shall in his answer expressly aver that the plaintiff or defendant is not a corporation.

Stockholders; members.

(964) § **21.** The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the incorporators and their successors are called members.

Stock of minor, insane person or decedent.

(965) § **22.** The shares of stock of an estate of a minor, or insane person, may, at all elections and meetings of a corporation, be represented by his guardian, and of a deceased person by his executor or administrator.

Married woman's stock.

(966) § **23.** Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, in the same manner as if she were a femme sole; and any proxy or power given by her, touching any shares of stock of any corporation owned by her, is valid and binding the same as if she were unmarried.

SECTION.
1. Subscriptions to stock may be enforced.
2. Books to be opened for subscriptions to stock.
3. Stock forfeited for non-payment or payment enforced.
4. Stock is negotiable.
5. Excess of stock void.
6. Corporation may own its stock.
7. Dividends belong to whom.

Subscription to stock may be enforced.

(967) § **1**. A subscription to the stock of a corporation about to be formed, is to be held for the benefit of the corporation when it is formed, and may be enforced by it.

Books to be opened for subscription of stock,

(968) § **2**. After the Secretary of the Territory issues the certificate of incorporation as provided in section 960, the directors named in the articles of incorporation must proceed in the manner specified or provided in their by-laws; or, if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; and to levy assessments and installments thereon, and to collect the same as in article 6 of this chapter, assessments of stock are required to be made.

May either forfeit the stock or recover subscription

(969) § **3**. When a corporation is authorized by the terms of subscription, or otherwise, to forfeit stock for non-payment, it may either forfeit the stock, or recover the amount of the subscription, but it cannot do both.

Stock is negotiable

(970) § **4**. All corporations for profit must issue certificates of stock when fully paid up, signed by the president and secretary, and may provide in their by-laws for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, aud may be transferred by endorsement by the signature of the proprietor, or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer.

Excess void.

(971) § **5**. A corporation whose capital is limited by its charter, either in amount or in number of shares, cannot issue valid certificates in excess of the limit thus prescribed.

Corporation may own its stock

(972) § **6** Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock, from its surplus profits, or as provided in the article on assessments of stock, or by the unanimous consent in writing of all its stockholders, in such manner and for such price or consideration as the said stockholders may unanimonsly decide upon.

Dividend belongs to whom

(973) § **7**. A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable.

SECTION.
1. Powers of corporations.
2. By-laws adopted by whom.
3. What the by-laws may provide.
4. By-laws must be certified and recorded repeal of by-laws.
5. Election of directors.
6. Same.
7. Same.
8. Number of directors and their powers;
9. Directors to organize and elect officers.
10. Dividends and debts; statute of limitations; false representations.
11. False representation of officer.
12. Removal of directors.
13. Quorum of stockholders; proxies.
14. Election failing; place of meeting; power of justice of the peace.
15. Individual liability of stockholders for debts.
16. Uncalled meeting is valid, when.
17. Transfers of non-resident stock.
18. Change in amount of capital stock.

Powers of corporations

(974) § **1.** Every corporation, as such, has power:

First. To have succession by its corporate name, for the period limited; and when no period is limited, perpetually.

Second. To sue and be sued; to complain and defend in any court.

Third. To make and use a common seal, and alter the same at pleasure.

Fourth. To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding, in any case, any amount limited by law.

Fifth. To appoint such subordinate officers and agents as the business of the corporation may require, and to allow them suitable compensation.

Sixth. To make by-laws not inconsistent with the law of the land, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

Seventh. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments.

Eighth. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

In addition to the above enumerated powers, and to those expressly given in any other statute under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers enumerated and given.

By-laws adopted by whom

(975) § **2.** Every corporation formed under this chapter must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the laws of the United States or of this Territory. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks notice of the same, by advertisment in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the

holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

What the by-laws may provide

(976) § **3.** A corporation may, by its by-laws, where no other provision is specially made, provide:

First. The time, place, and manner of calling and conducting its meetings.

Second. The number of stockholders or members constituting a quorum.

Third. The mode of voting by proxy.

Fourth. The time of the annual election for directors, and the mode and manner of giving notice thereof.

Fifth. The compensation and duties of officers.

Sixth. The manner of election and the tenure of office of all officers other than the directors; and,

Seventh. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

By-laws must be certified and recorded, repeal of by-laws

(977) § **4.** All by-law adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation, to be known as "the book of by-laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members; or the power to repeal and amend the by-laws and to adopt new by-laws may, by a similar vote at any such meeting, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of the repeal with the date of the meeting at which the repeal was enacted, shall be stated in the said book, and until so stated, the repeal shall not take effect.

Election of directors.

(978) § **5.** The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined, as provided in section 975.

Same

(979) § **6.** At the first meeting at which by-laws are adopted, or at such subsequent meeting as may be then designated, directors must be elected to hold their offices for one year, and until their successors are elected and qualified.

Same

(980) § **7.** All elections of directors must be by ballot, and a vote of stookholders representing a majority of the subscribed capital stock, or of a majority of the members, is necessary to a choice,

If there be capital stock in the corporation, each stockholder is entitled to one vote for each share held by him at all such elections, and also at all elections at other meetings of stockholders.

Number of directors and their powers.

(981) § **8.** The corporate powers, business and property of all corporations formed under this chapter must be exercised, conducted and controlled by a board of not less than three nor more than eleven directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporation. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

Directors to organize and elect officers

(982) § **9.** Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

Dividends, debts, statute of limitations does not apply.

(983) § **10.** The directors of corporations must not make dividends except from the surplus profit arising from the business thereof, nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase their capital stock, except as specially provided by law. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen), are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

False representation by officer.

(984) § **11.** Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more

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officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

Removal of directors.

(985) § **12**. No director shall be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it was called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 975, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

Quorum of stockholders, proxies

(986) § **13**. At all elections or votes had for any purpose, there must be a majority of the subscribed capital stock or of the members, represented either in person or by proxy, in writing. Every person acting therein, in person, or by proxy, or representative, must be a member thereof or a *bona fide* stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent stockholders or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election or majority vote had; such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.

Election failing, place of meeting, justice of the peace may call meeting in absence of any other officer

(987) § **14**. First. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders, as provided in section 985.

Second. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, or any proceedings thereof, the district judge of the district in which such election is held must proceed forthwith summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Before any proceedings had are

under this section, five days notice thereof must be given to the adverse party, or those to be affected thereby.

Third. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business: *Provided*, That the meetings of the boards of directors of railroad corporations having one or more directors resident in this Territory, or having duly appointed an agent resident in this Territory, upon whom service may be made, may be held at any place mentioned in the notice convening said board of directors, either within or without the Territory,

Fourth. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors,

Fifth. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation; by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

Individual liability of stockholders for debts.

(988) § **15.** Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation may institute joint or several actions against any of its stockholders that have not wholly paid the capital stock held by him, and in such action the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of stock. And in no other case shall the stockholders be individually and personally liable for the debts of the corporation. The term "stockholder," as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock nntil he becomes competent and able to control the same; but the responsibility of the

guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity; does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor or person or estate represented, is to be deemed the stockholder as respects such liability.

Unlawful meeting valid, when

(989) § **16.** When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

Transfers of non-resident stock.

(990) § **17.** When the shares of stock in a corporation are owned by parties residing out of the Territory, the president, secretary and directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate thereof to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer; and if such affidavt or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties satisfactory to the officers of the corporation. or if not so satisfactory, then one approved by the district judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer, and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

Change in amount of capital stock

(991) § **18.** Every corporation may increase or diminish its capital stock at a meeting called for that purpose by the directors, as follows:

First. Notice of the time and place of the meeting, stating its object and the amount to which it is proposed to increase or diminish its capital stock, must be personally served on each stockholder resident in the Territory, at his place of residence, if known, and, if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business, once a week for four weeks successsively.

Second. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

Third. At least two-thirds of the entire capital stock must be

represented by the vote in favor of the increase or diminution before it can be effected.

Fourth. A certificate must be signed by the chairman and secretary of the meeting, and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, and the vote by which the object was accomplished.

Fifth. The certificate must be filed in the office of the Secretary of the Territory, there to be recorded in the book of corporations, and thereupon the capital stock shall be so increased or diminished.

Sixth. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock as if a meeting were called and held; and upon such written assent the directors may proceed to make the certificate herein provided for.

ARTICLE 4.—CORPORATE RECORDS.

SECTION 1.
Record of business transactions; stock book; publicity.

(992) § 1. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done, or ordered to be done; who were present and who were absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and nays must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member, or stockholder to any action or proposed action, must be entered in full; all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

Record of business transactions; stock book, publicity.

Second. In addition to the records above required to be kept, corporations for profit must keep a book, to be known as the "stock and transfer book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stock-holder, member, or creditor.

ARTICLE 5.—DISSOLUTION OF CORPORATIONS.

SECTION.
1. Dissolution of Corporations.
2. Lapse of corporation by non-user.
3. Directors are trustees on dissolution.
4. Liability of trustees.
5. Revival of corporations.

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Dissolution of corporations, involuntary, voluntary, by the district court.

(993) § 1. A corporation is dissolved:

First. By the expiration of the time limited by its articles of incorporation.

Second. Its involuntary dissolution is provided for in sections 5357, 5358 and 5359.:

[SECTION 5357. If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter, has by neglect, abuse, or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

SECTION 5358. If judgment be rendered in such action against a corporation, or against a person claiming to be a corporation, the court may cause the costs therein to be collected by execution against the person claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.

SECTION 5359. When such judgment shall be rendered against a corporation the court has power to restrain the corporation, to appoint a receiver of its property, and to take an account and make distribution thereof among its creditors; and the district attorney must, immediately after the rendition of such judgment, institute proceedings for that purpose.—Dakota code.]

Third. If voluntary, its dissolution may be effected in the following manner:

First. A corporation may be dissolved by the district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

Second. The application must be in writing, and must set forth; that at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members; and that all claims and demands against the corporation have been satisfied and discharged.

Third. The application must be signed by a majority of the board of directors, trustees, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

Fourth. If the court is satisfied that the application is in conformity with this article, it must order the application to be filed and that the clerk give not less than thirty nor more than fifty days notice of the application, by publication in some newspaper published in the county,and if there are none such, then by advertisement posted up in five of the principal public places in the county.

Fifth. At any time before the expiration of the time of publication any person may file his objections to the application.

Sixth. After the time of publication has expired, the court may, upon five days notice to the persons who have filed objections or without further notice if no objections have been filed proceed to hear and determine the application; and if all the statements therein made are shown to be true, the court must declare the corporation dissolved.

Seventh. The application, notices and proof of publication,

objections (if any) and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions. Chap. 18.

Lapse of corporation by non-user.

(994) § **2.** If a corporation does not organize and commence the transaction of business, or the construction of its works, within one year from the date of its incorporation, its corporate powers cease.

Directors are trustees on dissolution

(995) § **3.** Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, and to collect and pay debts and divide among the stockholders the property which remains after the payment of debts and necessary expenses; and for such purposes may maintain or defend actions in their own names by the style of the trustees of such corporation dissolved, naming it; and no action whereto any such corporation is a party shall abate by reason of such dissolution.

Liability of trustees.

(996) § **4.** The trustees mentioned in the preceding section are jointly and severally responsible to the creditors, stockholders and members of the corporation, to the extent of its property in their hands.

Revival of corporation.

(997) § **5.** A corporation once dissolved can be revived only by the same power by which it could be created.

ARTICLE 6.—ASSESSMENTS OF STOCK.

SECTION.
1. Assessments may be levied, when.
2. Assessment limited.
3. New assessment can be levied, when.
4. Requisites of an assessment.
5. Form of notice.
6. Service of the notice.
7. Assessment unpaid; stock declared delinquent.
8. Contents of the notice
9. Publication of the notice.
10. Effect of publication.
11. Sale of the stock.
12. Definition of the term "bidder."
13. Stock bid in by corporation, when.
14. Stock held by corporation
15. Extension of notice.
16. Irregularities.
17. Redemption of stock; action to recover.
18. Proof of notice.
19. Directors may bring action.
20. Interest of delinquent member of corporation may be sold.
21. Purchaser becomes a member of the corporation.

Assessments may be levied, when.

(998) § **1.** The directors of any corporation formed or existing under the laws of this Territory, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein.

Assessment limited.

(999) § **2.** No assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation. except in the cases in this section otherwise provided for, as follows:

First. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is

sufficient then it may be for such a percentage as will raise that amount.

Second. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent per month, unless in the articles of incorporation it is otherwise provided.

Third. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

New assessment can be levied, when.

(1000) § **3.** No assessment must be levied while any portion of a previous one remains unpaid, unless:

First. The power of the corporation has beeh exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

Second. The collection of the previous assessment has been enjoined; or,

Third. The assessment falls within the provisions of either the first, second or third subdivision of section 999.

Requisites of an assessment.

(1001) § **4.** Every order levying an assessment must specify the amount thereof, when, to whom and where payable, fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order of levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

Form of notice.

(1002) § **5.** Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full Location of principal place of business.)

Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office).

Service of the notice.

(1003) § **6.** The notice must be personally served upon each stockholder, or in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be

one, and if there be none, then in a newspaper published in an adjoining county.

Assessment unpaid, stock declared delinquent.

(1004) § **7.** If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.)

NOTICE.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount). And in accordance with law (and an order of the board of directors made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary with location of office.)

Contents of notice

(1005) § **8.** The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificate for such shares have not been issued must be stated.

Publication of notice.

(1006) § **9.** The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

Effect of publication

(1007) § **10.** By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

Sale of stock.

(1008) § **11.** On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

Definition of term "bidder."

(1009) § **12.** The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

May be bid in by corporation if no other bidder.

(1010) § **13.** If at the sale of stock no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assess-

ments costs and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock of the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

Stock held by corporation.

(1011) § **14.** All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation, or vote of a majority of all the remaining shares. Whenever any portion of the capitol stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

Extended notice.

(1012) § **15.** The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

Irregularities

(1013) § **16.** No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void and publication must be begun anew.

Redemption of stock, action to recover

(1014) § **17.** No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all delinquent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

Proof of notice.

(1015) § **18.** The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is *prima facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the

same, certified by the secretary thereof, are *prima facie* evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are *prima facie* evidence of the contents thereof.

Directors may bring action.

(1016) § **19.** On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this article for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

Interest of delinquent member of corporation may be sold.

(1017) § **20.** Whenever any member of an incorporated company organized under articles 10, 12 and 13 of this chapter, duly organized under the laws of this Territory, where the same is not a stock company, shall refuse, fail or neglect to pay any assessment levied by the company of which he is a member, in accordance with law, after having been notified of such assessment as provided in said chapter, his share, interest or membership, in such company may be sold in the same manner and like proceedings had as in the sale of the stock of incorporated companies, under said chapter, and the title to such share, interest or membership when so sold shall vest absolutely in the purchaser thereof.

Purchaser becomes member of corporation.

(1018) § **21.** Any member of an incorporated company, not being a stock company, may, by deed, transfer his interests, share or membership therein, whereupon the purchaser thereof shall become a member of such company; and if any assessment or amount of money shall at the time be due and unpaid thereon, such share, interest or membership may be sold as in other cases, if such assessment or amount remains unpaid, after said purchaser has due notice of such delinquency.

ARTICLE 7.—JUDGMENT AGAINST AND SALE OF CORPORATE FRANCHISES

SECTION.
1. Corporate franchise may be sold.
2. Certificate of sale.
3. Rights of the purchaser.
4. Other powers remain.
5. Corporation may redeem its franchise.
6. Sale must take place, when.

Corporate franchise may be sold.

(1019) § **1.** For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise, and all the rights and privileges thereof may be levied upon and sold under execution, in the same manner and with the same effect as any other property, but without any exemption.

Certificate of sale

(1020) § **2.** The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same as hereinafter provided.

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Rights of the purchaser.

(1021) § **3.** The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

Other powers remain.

(1022) § **4.** The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures as before such sale.

Corporation may redeem its franchise.

(1023) § **5.** The corporation may, at any time within one year after such sale, redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor, with twelve per cent interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

Sale must take place, where.

(1024) § **6.** The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid. is situated.

ARTICLE 8.—EXAMINATION OF CORPORATIONS, ETC.

SECTION.		SECTION.	
1.	Legislature may examine into corporations.	2.	Power reserved.

Legislature may examine into corporations.

(1025) § **1.** The legislative assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this Territory at all times; and for that purpose any committee appointed by the said assembly, or either branch thereof, may administer all the necessary oaths to the directors, officers and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers and documents by summary process, to be issued on application to any district court or any judge thereof, under such rules and regulations as the court may prescribe.

Power reserved

(1026) § **2.** The Legislative Assembly may at any time amend this chapter or any article or section thereof.

ARTICLE 9,—RAILROAD CORPORATIONS. Chap. 18.

SECTION.
1. Who may form railroad corporations; articles to state, what.
2. Directors to open stock books.
3. Number of directors; election; who may be directors.
4. Officers of corporation,
5. Forfeiture of stock.
6. Stock deemed personal estate.
7. Capital stock how increased.
8. Who shall be liable as stockholders.
9. Powers of railroad corporations.
10. Corporation shall have power to borrow money.
11. Person selling property to railway has a lien.
12. Contract recorded when.
13. Extension and branches may be built.
14. The route may be changed.
15. Consolidating railroads; leasing and purchasing.
16. Changing corporate name.
17. Highways, etc., must be restored.
18. When railroad passes over the highway.
19. What property shall be subject to mortgage.
20. Conveyance or lease executed, how.
21. Directors may set aside money for payment of debts.
22. Defense of usury prohibited.
23. Directors may be classified.
24. Annual reports must be made; contents.
SECTION.
25. Power of corporation to enter upon lands.
26. Foreign corporation seeking to enter Territory.
27. May purchase or take realty.
28. Proceedings for taking real property when owner refuses to grant right of way.
29. Commissioners to act in all cases.
30. Guardians; married women,
31. Unknown owner.
32. Claimants on public lands.
33. Changing line or grade.
34. Public grounds and streets.
35. Rules for running trains.
36. Violation of rules for running trains.
37. Injuries to persons.
38. Fare paid imposes duty on company.
39. Changing highway.
40. Temporary ways provided.
41. Bridge repairs.
42. Signs at crossings.
43. Neglect to put up signs.
44. Bells and whistles.
45. Causeway.
46. Railway company shall maintain fence.
47. Notice from owner of land.
48. Liability of railway company.
49. Refusal to pay fare.
50. Right to deal in passage tickets.
51. Purchasers may sell tickets.
52. Railway company's police.
53. Right of way for telegraph and telephone lines.

(1027) § **1.** Any number of persons, not less than five, may form a corporation for the purpose of constructing, maintaining and operating a railroad for the transportation of freight and passengers, and for the purpose of maintaining and operating any railroad already constructed for the like purpose, by making articles of organization in which shall be stated: Who may form railroad corporation; articles, what to state.

First. *Name.* The name of the corporation.

Second. *Termini.* The place from and to which such railroad is to be constructed, or maintained and operated, as the case may be.

Third. *Length and route.* The estimated length of such railroads and name of each county in this Territory through or into which it is made or intended to be made.

Fourth. *Stock.* The amount of the capital stock of the corporation, the number of shares of which it shall consist, and if such stock shall consist of common and preferred stock, the number and amount of each class.

Fifth. *Directors and their duty.* The names and residences of the directors of the corporation, who shall manage its affairs for the first year, and until others are chosen in their places, and who shall be not less than five nor more than thirteen in number; and each such person shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in such corporation. There shall be annexed to such articles an affidavit

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of at least three of the directors therein named, that the signatures thereto are genuine, and that it is intended in good faith to construct or maintain and operate the railroad therein mentioned; and thereupon said articles and affidavits shall be filed in the office of the Secretary of the Territory, who shall indorse thereon the date of their filing, and record the same. After such filing a a patent under the seal of the Territory, signed by the governor and Secretary, of the Territory, shall be issued in substantially the following form,

To all to whom these Presents shall come, Greeting:

WHEREAS (naming the person subscribing the articles of organization), have filed in the office of the Secretary of the Territory certain articles of organizations with a view of forming a corporation to be known as (here insert the name), and with a capital of (here insert the amount), for the purpose of constructing, maintaining and operating or maintaining and operating a railroad from.....to..... ..and having complied with the provisions of the statutes in such cases made and provided; therefore the Territory of Oklahoma hereby grants unto the above-named persons and their associates, successors and assigns, full authority by and under the said name of.....to exercise the powers and privileges of a corporation for the purpose above stated and in accordance with their said articles of organization and the laws of this Territory.

In witness whereof these presents have been attested with the great seal and signed and countersigned by the Governor and Secretary of Oklahoma at... ..... the..... day of ....., in the year one thousand eight hundred and.... . .....

.....
Governor.

....
Secretary of Territory.

Upon the issue of such patent, the subscribers to such articles, and all persons who shall hereafter become stockholders in such corporation, shall be a corporation by the name specified in such articles, and shall possess all the powers and privileges, and be subject to all the provisions of the law regulating railroad corporations and the provisions of this chapter applicable thereto.

Directors to open stock books.

(1028) § **2**. When such patent is issued the directors may, in case the whole of the capital stock shall not have been before subscribed, open books of subscription to fill up the capital stock, at such place and after giving such notice as they may deem expedient, and may from time to time receive subscriptions until the capital stock is subscribed.

Number of directors, elections, who may be directors

(1029) § **3**. There shall be a board of not less than five nor more than thirteen directors of every such corporation, to manage its affairs, who shall be elected at such time, in such manner, and for such terms, as shall be prescribed by its by-laws, and shall hold their offices until their respective successors shall be chosen. In the election of directors each stockholder shall be entitled to one vote, either in person or by proxy, for every share of stock owned by him for thirty days next preceding such election. Vacancies shall be filled in the manner prescribed by the by-laws. Inspectors of the first elections of directors shall be appointed by the board of directors named in the articles of organization and thereafter as provided by the by-laws. No person shall be a director unless he shall be a stockholder, owning stock absolutely in his own name, or as trustee or personal representative, and qualified to vote at the election at which he shall be chosen; and at every election of directors the books and papers of such corporation shall be exhibited to the meeting if a majority of the stock-

holders present shall require it. If, for any reason, the election of directors shall not have been held at the time fixed therefor by law, the same may be held at any time thereafter on a notice of twenty days. Such election may be called by a majority of the directors, or by the stockholders holding a majority of the stock; but any meeting at which all the stockholders shall be present or be represented by attorney or proxy, it shall be lawful to waive notice, and proceed to an election of directors.

Officers

(1030) § **4**. The directors shall appoint one of their number presidcnt; they also may appoint a vice-president, secretary and treasurer, and such other officers and agents as shall be prescribed by the by-laws of such corporation.

Forfeiture of stock.

(1031) § **5**. The directors may require any amounts unpaid upon the capital stock to be paid in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution of the board, and the board shall have caused a notice in writing to be served on him personally, or by depositing the same in the postoffice, postage paid, properly directed to him at the postoffice nearest his usual place of residence, at least sixty days previous to the day on which said payment is required to be made, stating that he is required to make such payment at the time and place in such notice specified, and that if he fails so to do his stock and all previous payments thereon will be forfeited for the use of the corporation, such board may declare such stock and previous payments forfeited, and they shall be forfeited accordingly, to the use of the corporation, or such board may in any case enforce payment by action at law.

Stock deemed personal estate

(1032) § **6**. The stock of every such corporation shall be deemed personal estate, and shall be transferable in the manner prescribed in its by-laws, but no shares shall be transferable until all previous calls thereon shall have been fully paid in.

Capital stock how increased.

(1033) § **7**. The capital stock of any such corporation may be increased to such amount as may by its stockholders be deemed necessary for the construction or operation of its road, by a vote of the owners of at least two-thirds of all its stock, in person or by proxy, at any annual meeting, or at any meeting called by its directors for that purpose, by a notice in writing to each stockholder, or to be served on him personally, or by depositing the same in postoffice, postage paid, properly directed to him at the postoffice, if known, nearest his usual place of residence, at least twenty days prior to such meeting. Such notice shall state the time and place of such meeting, its object, and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the names of all the stockholders voting therefor, and the amount of stock owned by each, shall be entered upon the records of such corporation.

Who shall be liable as stockholders

(1034) § **8**. No person holding stock in any such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such corporation, for any

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calls or installments on any part-paid stock thereof; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in like manner, and to the same extent. as the testator or intestate, ward or person interested would have been if he had been living, or competent to act, and held the same stock in his own name.

Powers of railroad corporations.

(1035) § **9.** Every corporation formed under this article, and every railroad corporation authorized to construct, operate or maintain a railroad within this Territory shall be a body corporate by the name designated in its articles, shall have perpetual succession, shall have the right to sue and be sued, may have a common seal and alter the same at pleasure, and shall also have power:

First. *To make surveys.* To cause such examination and surveys for its proposed railroad to be made, as may be necessary to the selection of the most advantageous route; and for such purpose by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damage which shall be done thereto.

Second. *To hold real estate.* To take and hold such voluntary grants of real estate and other property as may be made to it, to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

Third. *Same.* To acquire under the the provisions of this article or by purchase. all such real estate and other property as may be necessary for the construction, maintenance and operation of its railroad, and the stations, depot grounds, and other accommodations reasonably necessary to accomplish the objects of its incorporation; to hold and use the same, to lease or otherwise dispose of any part or parcel thereof, or sell the same when not required for railroad uses, and no longer necessary to its use.

Fourth. *To lay out road, etc.* To lay out its read not exceeding one hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments and of obtaining gravel or other material, to take as much land as may be necessary for the proper construction, operation and security of the road, and for the protection of such road from snow, and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided by law for lands taken for the use of the corporation.

Fifth. *Construction of road.* Subject to the provisions of section 1044, to construct its railroad across, along or upon any stream of water, water-course, street, highway, toll or wagon road, plank road, turnpike, wharf, levee, river front, steamboat or other public landing, or canal, which its route shall intersect or touch; to carry any highway, street, toll or wagon road, plank road or turnpike which it shall touch, intersect or cross, over or under its track, as may be most expedient for the public good; to change the course or direction of any highway, street, turnpike, toll or wagon

road, or plank road, when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of the railroad, and take land necessary therefor: *Provided*, Such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods.

Sixth. *To connect with other road.* To cross, intersect, join and unite its railroad with any railroad heretofore or hereinafter constructed, at any point on its route and upon the grounds of such railroad corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections. And every corporation whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the ascertainment and determination of damages for the taking of real property. But no corporation which shall have obtained the right of way and constructed its road at the point of intersection, before the application for the appointment of commissioners may be made, shall be required to alter the grade or change the location of its road, or be required to bear any part of the expense of making and maintaining such crossings.

Seventh. *Depot grounds, etc.* To have and use equal room, ground, rights, privileges and conveniences for tracks, switches, sidings and turnouts upon any levee, river bank or front, steam, boat or other public landing, and upon any street, block, alley, square or public ground within any incorporated town or city, any charter or ordinance of any such city or town to the contrary notwithstanding; and to accomplish this, may adjust, with other corporations, the ground to be occupied by each with such tracks, switches, sidings and turnouts; and if such corporations cannot agree upon such adjustment, and the amount of compensation to be paid for the purchase or necessary change of location and removal of any track previously laid, the same shall be ascertained and determined, and the common, mutual and separate rights adjusted in the manner provided by law for the ascertainment and determination of damages for the taking of real property. The commissioners provided by law may employ a competent engineer, and define, locate and plat the ground, and assign to each corporation the part for the tracks and other conveniences for each, and may require the removal or purchase of tracks previously laid, so as to justly settle the rights of each corporation upon such ground, and assess the damages to be paid under the law providing for taking real property.

Eighth. *To carry persons and property.* To take and convey persons or property over their railroad by the power or force of steam or of animals, or by any mechanical power, and to receive

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Ninth. *To erect buildings.* To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of their passengers, freight and business, subject to the statutes in relation thereto.

Tenth. *To establish time-tables.* To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor.

Corporation shall have power to borrow money.

(1036) § **10.** To borrow from time to time such sums of money at such rates of interest and upon such terms as the corporation or board of directors shall agree upon and authorize as necessary or expedient, and to execute trust deeds or mortgages, or both, as occasion may require, on any railroads or parts thereof, constructed or in process of construction, for amounts borrowed or owing by the corporation, and therein to make provision granting, transferring, or mortgaging their railroad track, right of way, depot grounds, rights, privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools, implements, appendages, and appurtenances used in connection with such railroads in any manner whatever, then belonging to the corporation or which may thereafter belong to it, as security for any bonds or evidence of debt therein mentioned, in such manner as the corporation or directors shall think proper, and such instruments shall fully convey the same or so much thereof as shall be therein described. In case of sale by virtue of any such trust deed, or upon foreclosure of any such mortgage, the persons acquiring title under such sale and their associates, successors and assigns, or such corporation as they shall organize according to section 1027, with all the powers conferred upon corporations by this act, shall thereafter have, exercise and enjoy all such described grants which were purchased at such sale, including all rights, privileges, grants, franchises, immunities and advantages mentioned in such instruments which were possessed by such corporation making the same or contracting such debts, so far as the same relate or appertain to that portion or line of road granted or mortgaged and purchased at such sale and no further, as fully and absolutely in all respects as such corporation, its shareholders, officers and agents might have done if such sale had not taken place. And whenever the person so acquiring title under any such sale shall own or represent a majority in amount of the bonds or other evidences of debt secured by any such trust deed or mortgage, and shall also include the persons who owned at the time of the sale a majority in amount of the capital stock of such mortgage or corporation, such purchasers and such corporation as they shall organize as aforesaid, shall also have, possess and enjoy any exemption, privilege or immunity previously granted by any law to such former corporation relating to any of the property so acquired, to the same extent as if such latter corporation had been named in such law as the grantee thereof.

Person selling property to railway company shall have lien on same.

(1037) § **11.** In all cases where railroad equipment and rolling stock may have been or shall be sold to any person, firm, or cor-

poration, to be paid for in whole or in part in installments, or shall be leased, rented, hired or delivered, on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer or deliverer of the same until the agreed-upon price of or rent for such property shall have been fully paid, such condition in regard to the title so remaining in the vendor, lessor, renter, hirer or deliverer until such payments are fully made, shall be valid for all intents and purposes as to subsequent purchasers in good faith and creditors: *Provided*, The term during which the installments or rent are to be paid shall not exceed ten years, and such contract shall be in writing and acknowledged.

Where contract shall be recorded.

(1038) § **12.** Such contract shall be recorded in the office of the Secretary of the Territory and in the county in which is located the principal office or place of business of such vendee or lessee, and on each locomotive or car that may have been or may be so sold or leased, the name of the vendor or lessor or assignee of the vendor or lessor shall be marked, followed by the word "owner" or "lessor," as the case may be.

Extensions and branches may be built.

(1039) § **13.** Any railroad corporation may, under the provisions of this article, extend its road from any point named in its charter or articles of organization, or may build branch roads either from any point on its line of road or from any point on the line of any other road connecting or to be connected with its road, the use of which other road between such points and the connection with its own road such corporation shall have secured by lease or agreement for a term of not less than ten years from its date. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors, to be entered in the record of its proceedings, designate the route of such proposed extension or branch in the manner provided in section 1027, and file a copy of such record, certified by the president and secretary, in the office of the Secretary of the Territory, and cause the same to be recorded as provided in said section 1027. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive aid thereto which it would have had if it had been authorized in its charter or articles of organization. But this section shall not be construed to authorize any railroad corporations to consolidate with each other.

The route may be changed.

(1040) § **14.** The board of directors of every railroad corporation may, by a vote of two-thirds of the whole number, at any time alter the route or any portion of the route of their road, or any extension or branch thereof, or part of their road, or any extension or branch as constructed, if it shall appear to them that the line can be improved thereby; but no railroad shall be so diverted from any county, town, city or village which in its corporate capacity shall have extended aid to such road, either while in the hands of the then present owner or any former person or corporation; and no such alteration shall be made in any city or village after the road shall have been constructed therein, unless the same

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shall have been sanctioned by a vote of two-thirds of the legal voters of such county, town, city or village, the council of such city, or the trustees of such village. Before making any such alteration the board of directors shall designate the route thereof by resolution, to be entered in its records, filed and recorded in the office of the Secretary of the Territory, as provided in the preceding section; thereupon it shall have the same rights and privileges to build such road as altered, as if it were the original line.

Consolidating railroads, leasing and purchasing.

(1041) § **15.** Any railroad corporation may consolidate its stock, franchises, and property with any other railroad corporation, whether within or without the Territory, when their respective railroads can be lawfully connected and operated together to constitute one continuous main line, with or without branches, upon such terms as may be agreed upon, and become one corporation, by any name selected, which, within this Territory, shall possess all the powers, franchises, and immunities, including the right of further consolidation with other corporations under this section, and be subject to all the liabilities and restrictions of this article; and such in addition as such corporations peculiarly possess, or were subject to, at the time of consolidation by the laws then in force, applicable to them or either of them. Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock in person, or by proxy, at a regular annual meeting thereof, or a special meeting, called for that purpose, in the manner prescribed in section 1033, or by the consent in writing of such stockholders annexed to such articles; and a copy thereof, with a copy of the records of such approval or such consent, and accompanied by lists of their stockholders and the number of shores held by each, duly certified by the respective presidents and secretaries, with the respective corporate seals of such corporations affixed, shall be filed for record in the office of the Secretary of the Territory, before any such consolidation shall have any validity or effect. Any railroad corporation whose line is wholly or in part within this Territory, whether chartered by or organized under the laws of this Territory, or of any other state or territory, or of the United States, may lease or purchase and operate the whole or any part of the railroad of any other railroad corporation, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto when such railroads can be lawfully connected and operated together, so as to constitute a continuous main or branch line. And all such purchases or leases heretofore made or entered into, are for all intents and purposes hereby ratified and confirmed: *Provided*, That in no case shall the capital stock of the company formed by such consolidation exceed the sum of the capital stock of the companies so consolidated at the par value thereof, nor shall any bonds or other evidences of debt be issued as a consideration for or in connection with such consolidation.

Changing corporate name.

(1042) § **16.** Any railroad corporation may change its cor-

porate name and adopt any other by resolution adopted by the stockholders owning a majority of all the stock thereof, at either a regular annual meeting or a special meeting called for that purpose, in the manner prescribed in section 1033. Such changes shall not take effect until a copy of such resolution and of the record of its adoption, certified by the secretary under his hand and the corporate seal, shall be filed with the Secretary of the Territory. A like certified copy of such resolution shall be published for three successive weeks thereafter in any newspaper of general circulation published at the seat of government of the Territory. Every proceeding, act, liability, or thing done, undertaken, or encouraged by or on behalf of the corporation under its former name, shall be and continue of the same validity and obligation under such new name as if the name had remained unchanged.

Railroad corporation shall restore stream, highway, etc. as nearly as possible to former condition.

(1043) § **17**. Every corporation constructing, owning, or using a railroad, shall restore every stream of water, water-course, street, highway, plank road, toll or wagon road, turnpike, or canal, across, along, or upon which said railroad may be constructed, to its former state, or to such condition as that its usefulness shall not be materially impaired, and thereafter maintain the same in such condition against any effects in any manner produced by such railroad. When any lands shall be required in order to change any highway, street, turnpike, or plank road, toll or wagon road, the same may be condemned, taken, and compensation made in the manner provided by law; and when taken shall become a part of such highway, street, turnpike, or plank road, toll or wagon road, to the same extent as, and by the same tenure, by which the adjacent parts thereof are held.

When railroad passes over highways

(1044) § **18**. When it shall be necessary in the construction of a railroad to erect a bridge or culvert over any highway, street, turnpike or plank road, toll or wagon road, it shall be sufficient to construct the same so as to give a clear passage way of twenty feet, or two passage ways of fourteen feet each.

What property shall be subject to mortgage.

(1045) § **19**. All rolling stock of any railroad corporation organized under the provisions of this act used and employed in connection with its railroad, and all fuel necessary to the operation of the same, are declared and shall be held to be fixtures; and all such property, and all additional rights of way, depot grounds, and other real property, acquired subsequently to the execution of any trust deed, or mortgage which shall have been described or provided for therein, shall be subject to the lien thereof to the same extent as the property therein described, which the corporation owned at the time of its execution.

Conveyance or lease executed, how

(1046) § **20**, Every conveyance or lease, deed of trust, mortgage or satisfaction there of, made by any railroad corporation, of any franchises, real estate fixtures, or other real propetry, in pursuance of law, shall be executed and acknowledged in the manner in which conveyances of real estate by corporations are required to be, to entitle the same to be recorded, and shall be recorded in the office of the Secretary of the Territory, who shall indorse thereon his certificate thereof, specifying the day and hour of its reception, and the volume and page where recorded, which shall be evidence of

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such facts. Every such record of any such instrument shall, from the time of reception, have the same effect as to any property in this Territory described therein, as the record of any similiar instrument in the office of a register of deeds may have by law as to property in his county, and shall be notice of the rights and interests of the grantee, lessee, or mortgagee by such instrument to the same extent as if it were recorded in each and all of the several counties in which any property therein described may be situated.

Directors may set aside money for payment of debts

(1047) § **21.** The board of directors of any railroad corporation may annually or oftener, as may be deemed expedient, set apart and appropriate a sum of money not exceeding fifty per cent of its net earnings as resources for any one year, after paying the current expenses of their road and the interest on its outstanding indebtedness, in order to sink, redeem, pay off, cancel, or discharge the indebtedness of such corporation; and the said sums so set apart shall be annually applied to the payment and discharge of such debts of such corporation as shall be due, and to the purchase and redemption of the outstanding evidences of indebtedness of such corporation, as the board of directors thereof shall deem most for the interest of such corporation, and for no other purpose.

Defense of usury prohibited.

(1048) § **22.** No railroad corporation shall be allowed to make the defense of usury against the holder of any bond or other obligation for the payment of money issued by such corporation.

Directors may be classified.

(1049) § **23.** Any railroad corporation may, by a vote of a majority in amount of the stockholders present or represented at any annual meeting, classify its directors into three classes, each of which shall be composed, as nearly as may be, of one-third of the directors; the term of office of the first class to expire in one year, of the second in two years, and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years equal to the number whose term of office shall then expire; all other vacancies to be filled in accordance with the by-laws.

Annual report must be made.

(1050) § **24.** Every railroad corporation shall make an annual report to the stockholders of its operations during the year ending on the thirty-first day of December, which report shall be verified by the affidavit of the secretary, treasurer, and superintendent of the corporation, and shall state:

First. *Length of road, etc.* The length of the road in operation; the length of single track; the length of double track; the weight of the rail per yard.

Second. *Capital Stock.* The capital stock actually subscribed and the amount paid thereon.

Third. *Whole cost of road.* The whole cost of the road, showing the amount expended for the right of way, bridging, grading, iron and buildings respectively, and for all other purposes incidental to the construction of such road.

Fourth. *Indebtedness.* The amount and nature of its indebtedness, distinguishing the first, second and third mortgage bonds,

and the unsecured indebtedness, and the amount due the corporation.

Fifth. *Amount received.* The amount received for the transportation of passengers, property and mails, for interest, and from other sources respectively.

Sixth. *Amount of freight.* The amount of freight, specifying the quantity in tons or other usual mode of measurement.

Seventh. *Amount paid out.* The amount paid for the repairs of the road, buildings, engines and cars respectively; for fuel, taxes and interest, specifying the indebtedness on which the same is paid; for wages of employes; the aggregate amount paid for salaries of officers, and for any other purpose incidental to the business of transportation so as to give a complete statement of the entire annual expense of the corporation.

Eighth. *Amount of loss.* The amount of loss to the corporation paid for loss and damage to freight and injury to person and property.

Ninth. *Dividends.* The number and amount of dividends and when made, and in what manner such dividends have been paid.

Tenth. *Amount of sinking fund.* The amount appropriated to the sinking fund, and the manner in which the same has been applied, and the the total amount then held by such sinking fund.

Eleventh. *Persons killed.* The number of persons killed or injured, the causes thereof, and whether passengers or persons employed by the corporation.

Twelfth. *Manner of accidents.* Whether any such accidents have arisen from carelessness or negligence of any person in the employ of the corporation, and whether such person is retained in the service of such corporation. The secretary of each railroad corporation shall mail to every stockholder thereof, whose post-office address is known, a copy of its annual report, and shall file a certified copy thereof with the Secretary of the Territory on or before the first day of February in each year.

Power of corporation to enter upon lands

(1051) § **25.** Every railroad corporation incorporated under this act and any railroad corporation authorized to construct, operate or maintain a railroad within this Territory, has power and is authorized to enter upon any land for the purpose of examining and surveying its railroad, and to take, hold and appropriate so much real estate as may be necessary for the location, construction and convenient use of its road, including all necessary grounds for buildings, stations, work-shops, depots, machine-shops, switches, side-tracks, turn-tables, snow defences and water stations; all material for the construction of such road and its appurtenances, and the right of way over adjacent land sufficient to enable such corporation to construct and repair its road and the right to conduct water to its water stations, and to construct and maintain proper drains, and may obtain the right to such real estate by purchase or condemnation in the manner provided by the law.

Proceedings when corporation organized out of the Territory wishes to enter.

(1052) § **26.** Any railroad corporation chartered by or organ-

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ized under the laws of the United States, or any state or territory whose constructed railroad shall reach or intersect the boundary line of this Territory at any point, may extend its railroad into this Territory from any such point or points to any place or places within the Territory, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors, to be entered in the record of its proceedings, designate the route of such proposed extension or branch in the manner provided in section 1027, and file a copy of such record, certified by the president and secretary, in the office of the Secretary of the Territory, and cause the same to be recorded as provided in said section 1027. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch, and receive such aid thereto as it would have had had it been authorized so to do by articles of association duly filed in accordance with the provisions of this act.

May purchase or take realty.

(1053) § **27.** Any railroad corporation may purchase and use real property for a price to be agreed upon with the owners thereof; or the damages to be paid by such corporation for any real property taken as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appointed by the judge of the district court of the county or judicial subdivision, wherein such real estate is situated, in conformity with the provisions of this article.

Proceedings for taking real property where owner refuses to grant right of way.

(1054) § **28.** If the owner of any real property over which said railroad corporation may desire to locate its road, shall refuse to grant the right of way through and over his premises, the district judge of the county or subdivision in which said real property may be situated as provided in this article, shall, upon the application or petition of either party, and after ten days notice to the opposite party either by personal service or by leaving a copy thereof at his usual place of residence, or in case of his non-residence in the Territory by such publication in a newspaper as the judge may order, direct the sheriff of said county to summon three disinterested freeholders of said county or subdivision (or if there be none such then of the Territory) as commissioners, who shall be selected by said judge, and who must not be interested in a like question. The commissioners shall be duly sworn to perform their duties impartially and justly; and they shall inspect said real property and consider the injury which such owner may sustain by reason of such railroad; and they shall assess the damages which said owner will sustain by such appropriation of his land; and they shall forthwith make report thereof in writing to the clerk of the said court, setting forth the qnantity, boundaries and value of the property taken, or amount of injury done to the property which they assess to the owner; which report must be filed and recorded by the clerk, and a certified copy thereof may be transmitted to the register of deeds of the county or subdivision where the land lies, to be by him filed and recorded (without further acknowledgment or proof) in the same manner and with like force and effect as is provided

for the record of deeds. And if said corporation shall, at any time before it enters upon said real property for the purpose of constructing said road, pay to said clerk for the use of said owner the sum so assessed and reported to him as aforesaid, it shall thereby be authorized to construct and maintain its road over and across said premises: *Provided*, That if the corporation shall need or require for the purpose of constructing said railroad, to take and occupy any real property in any unorganized county, or in other unorganized country where there is no district court established, then the judge of the district court of the nearest organized county or subdivision (wherein such court is established), upon the line of said road, shall appoint commissioners to assess said damages; and he and they shall perform all other duties required of district judges and commissioners by the terms of this article, and either party shall have the right to appeal as in other cases herein provided: *And provided further*, That the report of the commissioners may be reviewed by the district court, on written exceptions filed by either party, in the clerk's office within sixty days after the filing of such report; and the court shall take such order therein as right and justice may require, either by confirming, modifying, or rejecting the same, or by ordering a new appraisement on good cause shown; or theier party may within thirty days after the filing of such report file with the clerk a written demand for a trial by jury; in which case the amount of damages shall be assessed by a jury, and the trial shall be conducted and judgment entered on the verdict in the same manner as civil actions in the district court. If the party demanding such trial does not recover a verdict more favorable to him than the assessment of the commissioners, he shall not recover costs in the district court; and all costs in the district court may be taxed against him: *And provided further*, That either party may appeal from the decision of the district court to the Supreme Court and the money so deposited shall remain in the hands of the clerk, as aforesaid, until a final decision be had and subject thereto. But such review or appeal shall not delay the prosecution of the work on said railroad over the premises in question, if such corporation shall first have paid or deposited with said clerk the amount so assessed by said commissioners; and in no case shall said corporation be liable for the costs on such review or appeal, unless the owner of such real property shall be adjudged entitled, upon either review or appeal, to a greater amount of damages than was awarded by said commissioners. The corporation shall in all cases pay the costs and expenses of the first assessment, And in case of review or appeal, the final decision may be transmitted by the clerk of the proper court, duly certified, to the proper register of deeds to be by him filed and recorded as hereinbefore provided for the recording of the report, and with like effect.

Commissioners to act in all cases.

(1055) § **29.** Freeholders so appointed shall be the commissioners to assess all the damages to the owners of real property in said county or subdivision; and said corporation may, at any time after their appointment, upon the refusal of any owner or guardian

of any owner of lands in said county or sub-division to grant the right of way as aforesaid, by giving said owner or guardian ten days notice thereof in the manner prescribed in the preceding section, have the damages assessed in the manner hereinbefore prescribed. In case of the death, absence, or refusal or neglect of any of said freeholders to act as commissioners as aforesaid, the sheriff shall, upon the selection of the district judge, summon other freeholders to complete the panel, and said commissioners shall receive three dollars per day each for their services, and the same shall be taxed in the bill of costs.

Guardians, married women.

(1056) § **30.** Whenever any railroad corporation shall take any real property as aforesaid, of any minor, any person insane or otherwise incompetent, or of any married woman whose husband is under guardianship, the guardian of such minor, insane or incompetent person, or such married woman with the guardian of her husband, may agree and settle with said corporation for all damages or claims by reason of the taking of such real property, and may give valid releases and discharges therefor upon the approval thereof by the judge of the probate court.

Unknown owner.

(1057) § **31.** If upon the location of said railroad it shall be found to run through the real property of any non-resident owner who is unknown to the corporation, or who has not been by it informed thereof, and has neither granted nor refused to grant the right of way through and over his said premises, the said corporation may give four weeks notice to such owner, if known, and if not known, by a description of such real property, by publication four consecutive weeks in some newspaper published in the county or subdivision where such real property may lie, if there be any, and if not, in one nearest thereto on the line of their said road, that said railroad has been located through and over his lands; and if said owner do not, within thirty days thereafter, apply to the district judge to have the damages assessed, in the mode prescribed in this article, said corporation may proceed to have the damages assessed as hereinbefore provided, subject to the same right of review and appeal, as in case of resident owners; and upon payment of damages assessed to the clerk of the district court, the corporation shall acquire all the rights and privileges mentioned in this article.

Claimants on public lands

(1058) § **32.** Any railroad corporation is authorized to pass over, occupy and enjoy all the public lands, to the extent and in the manner prescribed by the act of congress approved March 3, 1875: *Provided*, That the damages accruing to any occupant or possessory claimant or other person who may reside on or have improvements upon said public land, shall be determined and paid by said railroad corporation as provided in this chapter for owners of private lands.

Changing line or grade.

(1059) § **33.** Whenever any railroad corporation shall find it necessary, for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the grade or location of any portion of its road, such railroad corporation shall be and is hereby authorized to make such

changes of grade and location, not departing from its general route. And for the purpose of making any such change in the location and grades of any such roads as aforesaid, such corporation shall have all the rights, powers and privileges to enter upon and appropriate such real property, and make surveys necessary to effect such changes and grades, upon the same terms, and subject to the same obligations, rules and regulations as are prescribed by law; and shall also be liable in damages, when any may have been caused by such change to the owner of real property upon which such road was heretofore constructed, to be ascertained and paid, or deposited as herein provided; but no damages shall be allowed unless claimed within ninety days after actual notice in writing of such intended change shall be given to such owner residing on the premises, or, if non-resident, notice by such publication in some newspaper in general circulation, as the district judge may order.

Public grounds and streets.

(1060) § **34.** If it shall be necessary, in the location of any part of any railroad, to occupy any road, street, alley, or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation or public officer or public authorities owning or having charge thereof, and the railroad corporation, to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary, in the judgment of the directors of such railroad corporation, to use or occupy such road, street, alley or other public way or ground, such corporation may appropriate so much of the same as may be necessary for the purposes of such road, in the same manner and upon the same terms as is provided in this chapter for the appropriation of the property of individuals.

Rules for running trains

(1061) § **35.** Every such railroad corporation shall start and run its cars, for the transportation of persons or property, at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto offer, or be offered, for transportation at the place of starting, or at the junction of other railroads, and at siding or stopping places established for receiving and discharging way passengers and freight, and shall take, transport, and discharge passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

Violation of provisions of preceding section, penalty.

(1062) § **36.** In case of the refusal by such corporation or its agents to take or transport any passenger or property as provided in the preceding section; or in case of the neglect or refusal of such corporation or its agents to discharge or deliver passengers or property at the regularly appointed place, under the laws which regulate common carriers, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby with costs of action.

Injuries to persons

(1063) § **37.** In case any passenger on any railroad shall be injured while on the platform of a car while in motion, or in any baggage, wood or freight car, in violation of the printed regulations of the corporation posted up at the time in a conspicuous place

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inside of its passenger cars then in the train, such corporation shall not be liable for the injury: *Provided*, It had furnished room inside its passenger cars sufficient for the accommodation of its passengers.

Fare paid imposes duty on company.

(1064) § **38.** When fare is taken by any railroad corporation for transporting passengers on any mixed train of passenger and freight cars, or on any baggage, wood, gravel or freight car, the same care must be taken and the same responsibility and duties are assumed by the corporation as for passengers on passenger cars.

Changing highway.

(1065) § **39.** Any railroad corporation may raise or lower any turnpike, plank road, or other way, for the purpose of having its railroad pass over or under the same; and in such cases said corporation shall put such turnpike, plank road or other way, as soon as may be, in good repair.

Temporary ways provided

(1066) § **40.** Every railroad corporation, while employed in raising or lowering any turnpike or other way, or in making any other alterations, by means of which the said way may be obstructed, shall provide and keep in good order, suitable temporary ways to enable travellers to avoid or pass such obstructions.

Bridge repairs

(1067) § **41.** Every railroad corporation shall maintain and keep in good repair all bridges, with their abutments, which such corporation shall construct for the purpose of enabling its road to pass over or under any turnpike road, canal, water course, or other way.

Signs at crossings.

(1068) § **42.** Every railroad corporation operating a line of road within this Territory must erect suitable signs of caution at each crossing of its road with a public highway, which signs shall be painted with black Roman or block letters, on white back ground, "railroad crossing, look out for the cars:" said letters to be at least eight inches in length and proportionately broad; said signs shall be placed at the top of posts at least fifteen feet high.

Neglect of same.

(1069) § **43.** In case any railroad corporation shall refuse or neglect, for a space of thirty days after notice given by the board of county commissioners, to comply with the provisions of the preceding section, it shall become the duty of the county commissioners of each county through which any such railroad shall be in operation to erect such signs, and the company shall be liable for all expenses so incurred by said commissioners.

Bells and whistles

(1070) § **44.** A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the said railroad shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to this Territory, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

Causeway.

(1071) § **45.** When any person owns land on both sides of any railroad, the corporation owning such railroad, shall, when re-

quired to so do, make and keep in good repair one causeway or other safe and adequate means of crossing the same.

Railroad company shall maintain fence.

(1072) § **46**. Whenever the owner of any tract of land abutting against any line of railroad within this Territory, shall desire to enclose any such tract of land for pasturage or other purposes, and shall construct a good and sufficient fence about said tract of land on all sides except along the side abutting against such railroad, it shall be the duty of such railroad company to construct a good and sufficient fence not less than four and one-half feet high, on the side of such tract or lot so far as the same extends along the line of such railroad, and to maintain the same in good repair and condition until released therefrom by the owner of said tract, or until the owner of said tract shall have ceased to maintain in good repair and condition for the term of one year his portion of the fence around such inclosure.

Notice from owner of lands.

(1073) § **47**. Whenever the owner of any tract of land shall have completed his portion of the fence about such proposed inclosure, he shall give written notice of its completion to the railroad company upon whose line said tract is situated, by personal service upon the agent of said company at the station nearest to the proposed inclosure, describing in said notice the situation of said tract and the number of acres to be inclosed, as near as may be, and the length of the fence required along the line of snch railroad to complete the proposed inclosure; and it shall be the duty of the railroad company to construct and complete its portion of such fence within sixty days after the service of such notice.

Liability of railway company.

(1074) § **48**. If any railroad company shall neglect or refuse to comply with any of the requirements of this act, it shall be lawful for the owner of such tract to construct or repair the fence along the line of such railroad, and the railroad company shall be liable to the owner thereof, to an amount not exceeding one dollar and twenty-five cents per rod, to be recovered in a civil action; and such railroad company shall be liable for all damages accruing by reason of such neglect or refusal.

Refusal to pay fare.

(1075) § **49**. If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars in the following manner:

A passenger who refuses to pay his fare, or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place, or near some dwelling house. After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

Right to deal in passage tickets.

(1076) § **50**. Any person having an established place of business in any village, town or city within this Territory, shall have the right to buy, sell and exchange passage tickets or other evidences of a right of passage from one place to another upon any railroad line or steamboat line and their connections that said tickets may have been regularly issued over and for.

Purchasers may sell.

(1077) § **51**. Any person purchasing a ticket from the authorized office of any line for the transportation of passengers, shall

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have the right to sell his ticket or tickets to any person doing business under this act: *Provided*, That nothing in this act shall be construed to prevent any incorporated village, town or city to regulate this business by any law deemed necessary for the protection of the public.

Railway companies may appoint police.

(1078) § **52**. Railway companies organized under the laws of this Territory, or doing business within the Territory, are hereby authorized and empowered at their own expense to appoint and employ policemen at such stations or other places on the lines of their railroads within this Territory, as said companies may deem necessary for the protection of their property, and the preservation of order on their premises, and in and about their cars, depots, depot grounds, yards, buildings or other structures; and said policemen shall have power and authority to arrest, with or without warrant, any person or persons who shall commit any offense against the laws of this Territory, or the ordinances of any town, city, village or municipality, when such offense shall have been committed upon the premises of said companies, or in and about their cars, depots, depot grounds, yards, buildings, or other structures; and shall also have the authority of sheriffs, constables and peace officers in regard to the arrest and apprehension of any such offenders, in or about the premises or appurtenances aforesaid; but in case of the arrest by said policemen of any person without warrant, they shall forthwith take such offender before some justice of the peace or other magistrate having jurisdiction, and make complaint against said offender according to law. Nothing in this act contained shall be construed as restricting the lawful rights, powers or privileges of any sheriff, constable, policeman, or peace officer within their respective jurisdiction, and for the official acts of such policeman or policemen the railroad company making such appointment shall be held responsible to the same extent as for the acts of any of its general agents or employes.

Right of way for telegraph and telephone lines

(1079) § **53**. There is hereby granted to the owners of any telegraph or telephone lines operated in this Territory, the right of way over lands and real property in this Territory, and the right to use public grounds, streets, alleys and highways in this Territory, subject to control of the proper municipal authorities as to what grounds, streets, alleys or highways said lines shall run over or across, and the place the poles to support the wires are located; the right of way over real property granted in this act may be acquired in the same manner and by like proceedings as provided for railroad corporations.

ARTICLE 10.—WAGON ROADS.

SECTION.
1. Wagon roads laid out, how.
2. Map of road must be filed; record of approval.
3. Bridges and ferries; tolls.
4. Public highways used.
5. Toll rates posted.
6. Tolls required.
7. Toll gatherer's duty.
8. Passing around gate.
9. Injuring the road.
10. Revenue applied, how.
11. Mortgaging the road.
12. Natural person operating the road.

Wagon roads laid out, how.

(1080) § **1.** Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows: Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of commissioners of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road, to the board of commissioners of the county as provided in the succeeding section.

Maps of route muse be filed; record of approval.

(1081) § **2.** When the route is surveyed a map thereof must be submitted to and filed with the board of commissioners of each county through or into which the road runs, giving its general course, and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the board of county commissioners must either approve or reject the survey. If approved, it must be entered of record on the journal of the board, and such approval authorizes the use of all public lands and highways over which the survey runs; but the board of county commissioners must require the corporation at its own expense, and the corporation must so change and open the highways so taken and used as to make the same as good as they were before the appropriation thereof; and must so construct all crossings of public highways over and by its road and its toll gates, as not to hinder or obstruct the use of the same.

Bridges and ferries, Tolls.

(1082) § **3.** All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries or bridges as are fixed by the board of commissioners of the proper county through which the road passes, or in which the ferry or bridge is situate, subject, however, to the limitation of rates for ferriage prescribed in the general law upon ferries; but in no case must the tolls be more than sufficient to pay fifteen per cent per annum on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges and ferries. If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its franchise, and must pay to the party so charged one hundred dollars as liquidated damages.

Public highways used.

(1083) § **4.** When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a toll gate on or take tolls for the use of such highway or public road by teamsters, travellers, drovers, or any one transporting property over the same.

Toll rates posted.

(1084) § **5.** The corporation must affix and keep up, at or over each gate or in some conspicuous place, so as to be conveniently read, a printed list of the rates of toll levied and demanded.

Tolls required.

(1085) § **6.** Each toll gatherer may prevent from passing through his gates persons leading or driving animals or vehicles subject to toll, until they shall have paid, respectively, the tolls authorized to be collected.

Toll gatherer's duty.

(1086) § **7.** Every toll gatherer, who at any gate, unreasonably hinders or delays any traveller or passenger liable to the

payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense forfeits the sum of twenty-five dollars to the person aggrieved,

Passing around gate.

(1087) § **8.** Every person who, to avoid the payment of the legal toll, with his team, vehicle or horse, turns out of a wagon, turnpike or plank, or passes any gate thereon on the ground adjacent thereto, and again enters upon such road, for each offense forfeits the sum of five dollars to the corporation injured.

Injuring road.

(1088) § **9.** Every person who:

First. Wilfully breaks, cuts down, defaces or injures any milestone or post on any wagon, turnpike or plank road; or,

Second. Wilfully breaks or throws down any gate on such road; or,

Third. Digs up or injures any part of such road, or anything thereunto belonging; or,

Fourth. Forcibly or fraudulently passes any gate thereon without having paid the legal toll;

For each offense forfeits to the corporation injured the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act.

Revenue applied.

(1089) § **10.** The entire revenue from the road shall be appropriated.

First. To repayment to the corporation of the costs of its construction, together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and,

Second. To the payment of the dividend among its stockholders, as provided in section 1082. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay a dividend of twelve per cent per annum, and incidental expenses, and to keep the road in good repair,

Mortgaging the road.

(1090) § **11.** The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair their road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances, and then only after an affirmative vote of two-thirds of the capital stock subscribed.

Natural persons like corporations.

(1091) § **12.** When a wagon, turnpike or plank road is constructed, owned or operated by any natural person, this chapter is applicable to such person in like manner as it is applicable to corporations.

ARTICLE II.—INSURANCE CORPORATIONS. Chap. 18.

Stock and General Mutual Companies.

SECTION.
1. Formation of insurance companies.
2. Reinsurance may be taken.
3. Declaration of intention to be filed and published.
4. Charter of company to contain what.
5 Company shall not engage in trade.
6. Capital stock of company.
7. Limit of risk taken by company.
8. Books for subscription to stock.
9. Capital invested, how.
10. Purchasing real estate.
11. Charter issued by the territorial auditor.
12 By-laws of the company.
13. Dividends from surplus profits.
14. Charter may be extended.
15. Capital stock may be increased.
16. Company must make annual statement.
17. What the statement must contain.
18. Special statements may be required.
19. Statements must be verified.
20. Company prohibited from doing business, when.
21. Forfeit for neglect.
22. Auditor may prevent publication.
23. Company retiring from business.
24. Foreign companies seeking to enter territory.
SECTION.
25. Agents to procure certificates.
26. Violation of preceding.
27. Provisions apply to all foreign companies.
28. Revocation of authority.
29. Auditor to make examination of companies.
30. Duty of auditor when assets are insufficient.
31. When directors are liable.
32. When transfer of stock will not release stockholder.
33. Revocation of certificates.
34. Penalties removed, how.
35. Duration of charters.
36. Capital stock may be reduced, when and how.
37. Statement of receivers of insurance companies.
38. Publication of statement.
39. Fees.
40. Taxes.
41. When company may begin business.
42. Responsibility of agents.
43. Reciprocal obligations.
44. Annual statements.
45. Changing principal offices.

County Mutual Companies.

SECTION.
46. Who may unite to form company.
47. Directors.
48. Articles to be filed.
49. May issue policies.
50. Duty of company in hail insurance.
51. Obligation of party insured against hail.
52. Appointment of hail loss adjusters.
53. What by-laws may provide regarding hail department.
54. Obligation of party insured against fire and lightning.
SECTION.
55. In case of loss.
56. Company may classify property.
57. Secretary to collect assessments.
58. Suits.
59. Cannot insure property outside of county.
60. Election of directors.
61. Statement of condition.
62. Withdrawals.
63. Non-residents
64. By-laws.
65. Duration of company.

Cancellation and Forfeiture of Policies.

SECTION.
66. Holder of policy may surrender for cancellation at any time.
SECTION.
67. Policy forfeited, when.
68 Premium defined.

Chattel Mortgages in Applications.

SECTION.
69. Mortgage and application must be separate and distinct.
SECTION.
70. Penalty.

(1092) § **1.** Any number of persons, not less than seven, may associate, form and incorporate a company for the following purposes, to-wit: To make insurance upon dwelling houses, stores, Formation of insurance companies.

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and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, lightning, cyclone, tornado or hail, and the risk of inland navigation and transportation. Any and all insurance companies incorporated under the provisions of this act shall, in a declaration and charter provided to be filed, have expressed an intention to make an insurance, or which shall have power to make insurance against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights and other property, against loss and damage by all or any of the risks of lake, river, canal and inland navigation and transportation.

Reinsurance may be taken.

(1093) § **2.** Any companies organized under this act shall have power to effect reinsurance of any risks taken by them respectively.

Declaration of intention to be filed and published.

(1094) § **3.** Such persons shall file in the office of the Territorial Auditor a declaration, signed by all the incorporators, expressing their intention to form a company for the purpose of transacting the business of insurance, as expressed in the first section of this act, which declaration shall also comprise a copy of the charter proposed to be adopted by them, and shall publish a notice of such intention, once in each week, for at least four weeks, in a public newspaper published in the county in which such insurance company is proposed to be located.

Charter of company, what it shall contain.

(1095) § **4.** The charter comprised in such declaration shall set forth the name of the company, the place where the principal office for the transaction of its business shall be located, and the mode and manner in which the corporate powers granted by this act are to be exercised, the mode and manner of electing directors, a majority of whom shall be citizens of this Territory, and filling of vacancies, and each director of the company shall be the owner, in his own right, of at least five hundred dollars worth of the stock of such company, and the period for the commencement and termination of its fiscal year and the amount of capital to be employed in the transaction of its business; and the Territoral Auditor shall have the right to reject any name or title of any company applied for, when he shall deem the name too similar to any one already printed or likely to mislead the public in any respect.

Company shall not engage in trade.

(1096) § **5.** No company formed under this act shall, directly or indirectly, deal or trade in buying or selling any goods, wares, merchandise or other commodities whatever, except such articles as may have been insured by such company and are claimed to be damaged by fire, lightning, cyclone, tornado, hail or water.

Capital stock of the company.

(1097) § **6.** No company shall be incorporated under this act with a capital less than one hundred thousand dollars, actually paid in cash, and shall at all times be provided with cash on hand equal, at least, to twenty per centum of its capital. No joint-stock fire, cyclone, tornado, hail, inland or marine insurance company, of any other state, territory or nation, shall do business in this Territory, unless it has at least one hundred thousand dollars capital, actually paid in cash.

(1098) § **7.** No fire insurance company organized under this act, or transacting business in this Territory, shall expose itself to any loss by any one fire or inland navigation risk or hazard to an amount exceeding ten per centum of its paid up capital, and it shall be lawful for any company doing business in the Territory to insure houses, buildings, and all other kinds of property against loss or damage by fire, lightning, cyclone or tornado, and to make all kinds of insurance on goods, merchandise or other property in the course of transportation, whether on land or water, or any vessel or boat, wherever the same may be; to insure growing crops against damage or loss by hail; to insure horses, cattle and other live stock, against loss or damage by accident, theft, or any other unknown or contingent event whatever, which may be subject to legal insurance; and to cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon any interest which it may have in property; and generally to do and perform all other matters and things proper to promote these objects; and no company organized under this act for transacting business in this Territory, shall expose itself to loss on any one risk or hazard, to an amount exceeding ten per centum of its paid up capital, unless the excess shall be reinsured in some other good reliable company.

Limit of risk taken by company.

(1099) § **8.** It shall be lawful for the individuals associated for the purpose of organizing any company under this act, after having published the notice and filed the declaration and charter as required by section 1094, and also on filing in the office of the Territorial Auditor, proof of such publication, by the affidavit of the publisher of said newspaper, his foreman or clerk, to open books for subscription to the capital stock of the company so intended to be organized, and to keep the same open until the full amount specified in the charter is subscribed.

Books for subscription to stock.

(1100) § **9.** It shall be lawful for any insurance company organized under this act, or any such company incorporated under any law of this Territory, to invest its capital and the fund accumulated in the course of its business, or any part thereof, in bonds and mortgages on improved unincumbered real estate within the Territory of Oklahoma, worth double the sum loaned thereon (exclusive of buildings, unless such buildings are insured and the policy transferred to said company), and also in the bonds of the Territory, or stocks, or treasury notes of the United States, and also the bank stock of national banks, and also in the stock and bonds of any county or incorporated city in the Territory, authorized to be issued by the Legislature; to loan the same, or any part thereof on the security of such stocks, or bonds, or Treasury notes, or upon bonds or mortgages as aforesaid, and to change and reinvest the same as occasion may, from time to time, require, but the surplus money over and above the capital stock of such insurance company, incorporated under any law of this Territory, may be invested in or loaned upon the pledge of public stocks or bonds of the United States, or any of the states, or stocks, bonds, or other evidences of indebtedness of any solvent, dividend-paying institution, incorporated under the laws of

Capital may be invested.

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this Territory, or United States, except their own stock: *Provided, always*, That the market value of such stocks, bonds or other evidence of indebtedness, shall be at all times, during the continuance of such loan, at least ten per centum more than the amount loaned thereon.

Purchasing real estate, limitation.

(1101) § **10.** No company organized by or under this act shall purchase, hold or convey real estate, except for the purpose and in the manner herein set forth, to-wit:

First. Such as shall be requisite for the convenient accommodation in the transaction of its business; or,

Second. Such as shall have been mortgaged to it in good faith as security for loans previously contracted, or for money due; or,

Third. Such as shall have been conveyed to it in satisfaction of debts previously contracted in their legitimate business, or for money loaned; or,

Fourth. Such as have been purchased at sales upon judgment, degrees or mortgage foreclosures obtained or made for such debts. And it shall not be lawful for any such company to purchase, hold or convey real estate in any other case or for any other purpose.

Charter shall be issued by the auditor

(1102.) § **11.** The charter or proof of publication herein required to be filed by every such company, shall be examined by the district [county] attorney of the county in which the principal office of the company is located, and if found conformable to this act, and not inconsistent with the laws of the Territory, shall be certified by him to the Territorial Auditor, who shall thereupon cause an examination to be made, either by himself or three disinterested persons specially appointed by him for that purpose, who shall certify under oath that the capital herein required of the company named in the charter, according to the nature of the business proposed to be transacted by such company, has been paid in, and is possessed by it in money, or in such stocks and bonds and mortgages as are required by section 1100 of this act. Such certificates shall be filed in the office of the said Auditor, who shall thereupon deliver to such company a certified copy of the charter and of such certificates, which, on being filed in the office of the register of deeds of the county where the company is to be located, shall be their authority to commence business and issue policies; and such certified copy of the charter and of said certificates may be used for or against such company with the same effect as the originals, and shall be conclusive evidence of the fact of the organization of such company.

By-laws.

(1103) § **12.** The incorporators or directors, as the case may be, of any company organized under this act, shall have the power to make such by-laws, not inconsistent with the laws of this Territory, as may be deemed necessary for the government of its officers and conduct of its affairs, and the same, when necessary, to alter and amend. And they and their successors may have a common seal, and change and alter the same at their pleasure.

Dividends to be made from surplus profits

(1104) § **13.** It shall not be lawful for the directors, trustees or managers of any insurance company organized under this act, or incorporated under any law of this Territory, to make any dividends, except from the surplus profits arising from their busi-

ness; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on all unexpired risks and policies, which amount, so reserved, is hereby declared to be unearned premiums; and there shall be also reserved all sums due the corporation on bonds, mortgages, stocks and book account of which no part of the principal or interest thereon has been paid during the year preceding such estimate of the profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and on which interest shall not have been paid.

Charter may be extended.

(1105) § **14.** Any existing insurance company heretofore incorporated under the laws of this Territory, or any company organized under this act, having a capital of at least one hundred thousand dollars, may, without increasing its capital at any time within two years previous to the termination of its charter, after giving notice at least once a week for four weeks successively, in a newspaper published in the county where such company is located, of such intention, with declaration under its corporate seal, signed by the president and two-thirds of the directors of their desire for such extension, provided such directors have been so instructed by a majority vote of the stock, may extend the term of its original charter in accordance with the provisions of this act, by altering or amending the same so as to agree therewith, and filing a copy of such amended charter, with the declaration aforesaid, in the office of the Territorial Auditor, whereupon the same proceedings shall be had as are required in section 1108.

Capital stock may be increased.

(1106) § **15.** Any existing insurance company or any company formed under this law, may at any time increase the amount of its capital stock, after giving notice once a week for four consecutive weeks in any newspaper published in the county where such company is located, of such intention, with the written consent of three-fourths in amount of its stock, unless otherwise provided in its charter or by-laws, by altering or amending its charter or by-laws in this respect, upon filing a copy of its charter or by-laws so amended, together with the declaration under its corporate seal, signed by its president and directors of their desire to do so, with such consent of three-fourths in the amount of its stock to such increase, in the office of the Territorial Auditor, and upon the same proceedings had as are required by section 1108.

Company must make annual statement.

(1107) § **16.** Every insurance company doing business in this Territory must transmit to the Territorial Auditor a statement of its condition and business for the year ending on the preceding thirty-first day of December, which shall be rendered on the first day of January in each year, or within one month thereafter, except that foreign insurance companies shall transmit their statement of business other than that taken in the United States prior to the following first day of May; such statement must be published at least three times in a newspaper of general circulation, printed and published in each judicial district of this Territory in which

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said insurance company shall have an agency, and a duplicate thereof, upon which shall be indorsed the names of the attorneys on whom process of law can be served as required by this act, shall be filed in the office of the register of deeds of the county wherein the agency may be established, but the provisions of this section as to the appointment of attorneys shall not apply to companies organized within this Territory. Statements for publication shall be made out on blanks furnished by the Territorial Auditor, and the Territorial Auditor's certificate of authority for the company to do business in this Territory shall be published in connection with the said statement of each company doing business in this Territory. Proof of publication, to-wit, the printer's affidavit of the fact, shall be filed with the Territorial Auditor in all cases: *Provided*, The Territorial Auditor shall select three newspapers of general circulation, published in each of the judicial districts, from which said company shall select one in which said statement shall be published.

What the annual statement must contain.

(1108) § **17.** The annual statements required by the last section must be in form, and state particulars, as follows:

First. The name of the company and where located.

Second. The name and residence of the attorney for this Territory.

Third. The amount of capital stock actually paid in cash.

Fourth. The property or assets of the company, specifying:

(*a*) The value, as nearly as may be, of the real estate owned by the company.

(*b*) The amount of cash on hand, in office.

(*c*) The amount of cash on deposit in banks.

(*d*) The amount of cash in hands of agents and in course of transmission.

(*e*) The amount of loans secured by bonds and mortgages, being first lien on real estate worth double the amount of the sum loaned thereon.

(*f*) The amount of stocks and bonds owned by the company, specifying the amount, number of shares, and market value of each kind of stock, on the day of making the statement.

(*g*) The amount of stocks held by them, as collateral security for loans, with the amount loaned on each kind of stock, par value and market value thereof on the day the statement is made.

(*h*) The amount of all other sums due the company.

Fifth. The liabilities of such company specifying:

(*a*) The amount of losses unpaid.

(*b*) The amount of claims for losses, resisted by the company.

(*c*) The whole amount of unearned premiums on outstanding risks.

(*d*) The amount of dividends declared and due and remaining unpaid.

(*e*) The amount of dividends, if any, declared and not yet due.

(*f*) The amount of money borrowed and remaining unpaid, and the securities, if any, given for the payment thereof.

(*g*) The amount of all other existing claims.

Sixth. The income of the company during the proceeding year, specifying: Chap.

(*a*) The whole amount of cash premiums received, stating separately the amount of premiums received on policies written in the Territory of Oklahoma.

(*b*) The whole ammount of interest money received, stating separately the amount of interest received on loans in the Territory of Oklahoma.

(*c*) The whole amount of income received from all sources.

Seventh. Expenditures during the preceding year, specifying:

(*a*) The whole amount of losses paid during the preceding year, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement; also stating separately the amount of losses paid upon risks taken in this Territory, and how much accrued prior, and how much subsequent, to the preceding statement.

(*b*) The amount of dividends paid during the preceding year.

(*c*) The whole amount of fees and commissions paid to officers and agents during the preceding year.

(*d*) The amount of taxes paid during the preceding year, stating separately the amount paid in this Territory.

(*e*) The amount of fees paid the Auditor of this Territory, not including taxes.

(*f*) The whole amount paid for salaries of officers and agents during the preceding year.

(*g*) The whole amount of all other expenditures.

Eighth. Specifying:

(*a*) The gross amount of risks taken during the preceding year, stating the amount in this Territory separately.

(*b*) The whole amount of risks outstanding.

(*c*) The whole amount of losses incurred during the year, including those claims not yet due, stating separately those incurred in this Territory.

(*d*) The number of agents in this Territory.

Special statements may be required by auditor.

(1109) § **18**. The Territorial Auditor may require at any time statements from any company doing business in this Territory, or any of their officers and agents, on such points as he may deem necessary to elicit a full exhibit of its business and standing.

Statements must be verified.

(1110) § **19**. The statements required under this act must be verified by the signature and oath of the president or vice-president, with those of the secretary or actuary, or by the manager or general agent of a foreign company doing business in this Territory; and it shall be the duty of the Territorial Auditor to cause the information contained in the statements required by this act to be arranged in a tabular form and printed annually, and transmitted to the Territorial Legislature with his biennial report; also for distribution to the companies doing business in the Territory.

Company prohibited from doing business when.

(1111) § **20**. No company having neglected to file the statements required from it within the time and manner prescribed, shall do any new business after a notification by the Auditor, while such neglect continues.

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Forfeit for neglect.

(1112) § **21.** Any company wilfully neglecting to make and transmit any statement required by this act shall forfeit one hundred dollars for each week's delay.

Auditor may prevent publication.

(1113) § **22.** The Territorial Auditor has authority to prevent the publication of any part or all of the statement of any company made under this act until its annual report is made.

Company retiring from business.

(1114) § **23.** In case any insurance company not incorporated in this Territory shall cease to transact business in this Territory according to the laws thereof, the attorney last designated shall be deemed to continue the [as] attorney for such corporation, for the purpose of serving papers or process for the commencement of any action or proceedings for any violation or any liability accruing on their policies while transacting business in this Territory, and service of such papers in the action or proceedings aforesaid, upon any such attorney, shall be deemed valid and personal service upon such corporation.

Companies organized outside of territory must file statement and copy of charter.

(1115) § **24.** And every company or association shall also file a certified copy of its charter, together with a statement, under oath of the president (or vice-president) and secretary, stating the name of the company and where located, the amount of its capital, with a detailed statement of its assets, showing the amount of cash on hand, in bank, or in the hands of agents; the amount of real estate, and how much the same is incumbered by mortgage; the number of shares of stock of every kind owned by the company; the par and market value of the same; amount loaned on bond and morgage; the amount loaned on other security, stating the kind and amount loaned on each, and the estimated value of the whole amount of such securities and other assets or property of the company; also stating the indebtedness of the company; the amount of losses adjusted and unpaid; the amount incurred and in process of adjustment; the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company; also a report of the last annual report, if any, made under the laws of the state or county, and under which such company was incorporated. And no agent shall be allowed to transact business for any such company whose capital is impaired to the extent of twenty per cent thereof while such deficiency continues.

Agents to procure certificate

(1116) § **25.** It shall not be lawful for any agent or agents to act for any company or companies referred to in this act, directly or indirectly, in taking risks or transacting the business of fire, cyclone, tornada, hail and inland navigation insurance in this Territory, without procuring from the Territorial Auditor a certificate of authority, stating that such company has complied with all the requisites of this act which applies to such company. The statements and evidences of investment required by this act shall be renewed from year to year, in such manner and form as required by this act, and the Auditor on being satisfied with the capital, securities and investments remaining secured as hereinbefore provided, shall furnish a renewal of the certificate as aforesaid.

Violation of preceding section, penalty.

(1117) § **26.** Any violation of any of the provisions of this

act shall subject the party violating the same to a penalty of five hundred dollars for each violation, and to the additional sum of one hundred dollars for each month during which any such agent shall neglect to file such affidavits and statement as herein required.

(1118) § **27.** The provisions of this act shall apply to all foreign companies, partnerships, associations and individuals, whether incorporated or not. All insurance companies, associations, or partnerships incorporated or organized under the laws of any other state or territory of the United States or any foreign government, transacting the business of fire, cyclone, tornado, hail or marine insurance, or any other kind of insurance, in this Territory, shall make annual statements of their condition and affairs to the Auditor, in the same manner and the same form as similar companies organized under the laws of this Territory.

Provisions apply to foreign companies.

(1119) § **28.** If the Auditor has, or shall have at any time after examination, reason to believe that any annual statement or other report required or authorized by this act, made or to be made out by any officer or officers, agent or agents of any corporation, association or partnership, incorporated by or organized under the laws of any state or territory of the United States or any foreign government, is false, it shall be the duty of said Auditor to immediately revoke the certificate of authority granted on behalf of such corporation or association and mail a copy of such revocation to such company, and the agent or agents of such corporation, association or partnership, after such notice, shall discontinue the issuing of any new policies or of the renewal of any policy previously issued; and such revocation shall not be set aside nor any new certificate of authority be given until satisfactory evidence shall have been furnished to said Auditor that such corporation or association is in substance and in fact in the condition set forth in such statement or report, and that all requirements of said act have been fully complied with,

Revocation of authority.

(1120) § **29.** It shall be the duty of the Territorial Auditor, whenever he shall deem it expedient to do so, in person or by one or more persons appointed by him for that purpose, not officers or agents of, or in any manner interested in, any insurance company doing business in this Territory, except as policy holders, to examine into the affairs of any company incorporated under this act in this Territory or companies of other states or territories or any foreign companies doing business by its agents in this Territory; it shall be the duty of the officers or agents of any such company, doing business in this Territory to cause their books to be opened for the inspection of the Auditor or persons so appointed, and to otherwise facilitate such examination so far as it may be in their power to do, and pay all reasonable expenses incurred therein, in no case to exceed ten dollars per diem. And for that purpose the said Auditor, or person or persons so appointed by him, shall have the power to examine, under oath, the officers and agents of any such company, relative to the business of said company. And whenever the said Auditor shall deem it for the best interests

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of the public so to do he shall publish the result of such investigation in two newspapers in this Territory.

Duty of auditor when assets are insufficient.

(1121) § **30.** And whenever it shall appear to said Auditor from such examination, that the assets of any such company incorporated in this Territory are insufficient to justify the continuance in business of any such company, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the district [county] attorney, whose duty it shall be to apply to the district court of the county in which the principal office of the company shall be located, for an order requiring them to show cause why the business of such company shall not be closed, and the court shall thereupon proceed to hear the allegations and proof of the respective parties; and in case it shall appear to the satisfaction of said court that the assets and effects of said company are not sufficient as aforesaid, and that the interests of the public so require it, and the said court shall decree the dissolution of said company and a distribution of its effects. And said district court shall have the power to refer all applications for distribution to a referee, who shall inquire into, and report upon the facts stated therein. Any company receiving the aforesaid requisition from such Auditor, shall forthwith call upon thc stockholders for such amount as shall make the capital equal to the amount fixed by the charter of said company. And in case any stockholder of such company shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement in such time and manner as the Auditor shall approve, it shall be lawful for such Auditor to require the return of said original certificate of stock held by said stockholder, and in lieu therefor to issue new certificates for such number of shares as said stockholder may be entitled to, in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of said company; the value of such shares for which the new certificates shall be issued, to be ascertained under the direction of said Auditor, and the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock, dispose of the same and issue new certificates of stock to the amount sufficient to make up the original capital of the company.

When directors are liable

(1122) § **31.** And it is hereby declared that in the event of any additional losses incurring upon new risks, taken after expiration of the period limited by said Auditor, in the aforesaid requisition for the filling up of the deficiency in the capital of said company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof.

When transfer of stock will not release stockholder

(1123) § **32.** No transfer of the stock of any company organized under this act, made during the pendency of any such investigation, will release the party making the transfer from his liability for the losses which may have occurred previous to the transfer.

Revocation of certificates.

(1124) § **33.** And whenever it shall appear to said Auditor, from the report of the person or persons appointed by him, that

the affairs of any company not incorporated by the laws of this Territory are in unsound condition, he shall revoke the certificates granted in behalf of said company, and shall cause a notification thereof to be published in any newspaper of general circulation published at the capital, and mail a copy thereof to each agent of the company. The agent or agents of such company shall, after such notice, be required to discontinue the issuing of new policies and the renewal of any policies previously issued.

Penalties, how recovered.

(1125) § **34.** Every penalty provided for by this act, shall be sued for and recovered in the name of the Territory by the district [county] attorney in whose jurisdiction the company or agent or agents so violating shall be doing business, and one-half of all such penalties shall be paid, when recovered, into the treasury of said county, and the other half to the informer; and in case of the non-payment of such penalties, the party so offending shall be liable to imprisonment for a period not exceeding six months, in the discretion of any court having cognizance thereof.

Duration of charters.

(1126) § **35.** All companies incorporated or extended under this act, may provide in their charter for not more than thirty years duration, but the Legislature may at any time alter or amend this act, and provide for the closing up of the business and affairs of any company formed under it. Nothing herein contained shall be so construed as to prevent the subsequent extension of the charter of companies organized or extended under this act.

Capital stock may be reduced when and how.

(1127) § **36.** Whenever it shall appear to the Territorial Auditor, from examination made by him, in the manner prescribed by law, that the capital stock of any company organized under this act, is impaired to an amount exceeding twenty per cent of such capital, and he shall be of the opinion that the interests of the public will not be prejudiced by permitting such company to continue business with the reduced capital, it shall be lawful for such company, with the permission of the said Auditor, to reduce its capital stock, and the par value of the shares thereof, to such amount as the Auditor may, under his hand and seal, certify to be proper, and as shall, in his opinion, be justified by the assets and property of such company: *Provided*, That no part of such assets and property shall be distributed to the stockholders: *Provided, further*, That the capital stock of any such company shall not be reduced to an amount less than the sum now required by law for the organization of a new company under the general insurance laws, for the transaction of business at the place where such company is located, and of the kind which said company is authorized to transact. No reduction of the capital of any such company shall be made except upon a resolution of the board of directors, approved by at least two-thirds of the directors, certified under its corporate seal, signed by the president and at least two-thirds of the directors and proved or acknowledged in the manner required by law for the proof or acknowledgment of conveyances, which certificate shall be filed in the office of said Auditor before any action shall be had by him thereon. The Territorial Auditor, in case he shall permit any

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such company to reduce its capital in the manner provided in this act, shall execute the certificate required by this act in duplicate, and deliver one of said certificates to the officers of said company, who shall forthwith file the same with the clerk of said county in which said company is located, and the other to be filed in the office of said Auditor. Such company upon filing the certificate with the county clerk as required by this act, shall with such reduced capital, possess the same rights and be subject to the same liabilities as it possessed and was subject to at the time of the reduction of its capital, and the charter of such company shall be deemed to be amended in all respects to the amount of capital, and par value of the shares, so as to conform to the reduction. It shall be lawful for the said company to require the return of the original certificate of stock held by each stockholder, in lieu thereof to issue new certificates for such number of shares as each stockholder may be entitled to; in the proportion that the reduced capital may be found to bear to the original capital of the company. It shall be lawful for any such company after its capital shall be so reduced as aforesaid, to increase its capital stock in the manner prescribed by this act.

Statement of receivers of insurance companies

(1128) § **37.** It shall be the duty of all receivers of insurance companies, on or before the first day of March of each year, and at any other time, when required by the Territorial Auditor, to make and to file, annually, their statements of their assets and liabilities, and of their income and expenditures, in the same manner and form, and under the same penalties, as the officers of such companies are now required by law to make annual and other statements to the auditor.

Publication of statement.

(1129) § **38.** And the said Auditor shall also require its annual statement, required to be filed by this act, to be published, in conformity with the provisions of section 1107.

Fees

(1130) § **39.** There shall be paid by every company, association, person or persons, or agent, doing business in this Territory, to whom this act shall apply, the following fees :

Upon filing declaration, or certified copy of charter, twenty-five dollars.

Upon filing the annual statement. ten dollars.

For each certificate of authority, and certified copy thereof, two dollars.

For every copy of any paper filed in the department, the sum of twenty cents per folio; and for fixing official seal to such copy and certifying the same, the sum of one dollar.

For official examinations of companies under this act, the actual expenses incurred, not to exceed ten dollars per diem.

And companies organized under the laws of this Territory, shall pay the following fees:

For filing and examination of the first application of any company, and the issuing of the certificates of license thereon, ten dollars.

For filing each annual statement, and the issuing renewal of license required by law, three dollars.

For each certificate of authority to its agents, fifty cents: *Pro-*

vided, That the net amount of all fees over and above the cost of performing the clerical labor connected therewith shall not exceed under this act, the sum of two thousand dollars, and that any amount above that sum shall be paid over to the Territorial Treasurer for the general fund of the Territory.

Taxes.

(1131) § **40**. Every insurance company doing business in this Territory, except in joint-stock and mutual companies organized under the laws of this Territory, shall, at the time of making the annual statement, as required by law, pay into the State [Territorial] treasury, as taxes, two and a-half per cent of the gross amount of premiums received in this Territory during the preceding year, taking duplicate receipts therefor, one of which shall be filed with the Auditor; and upon the filing of said receipts, not until then, the said Auditor shall issue the annual certificate as provided by law; and the said sum of two and a-half per cent shall be in full of all taxes, State, [Territorial] and local.

When company may begin business.

(1132) § **41**. No company formed under this act for the purpose of doing the business of insurance on the mutual plan, shall commence business within this Territory, nor establish agencies for the transaction of business within this Territory, until agreements have been entered into for insurance with at least one hundred applicants, the premiums of which shall amount to not less than fifty thousand dollars, of which ten thousand dollars at least, shall have been paid in cash, and notes of solvent parties, founded on actual and *bona fide* applications for insurance, shall have been received for the remainder, and no one of the notes received as aforesaid, shall amount to more than two hundred dollars, and no two shall be given for the same risk, or be made by the same person or firm, except where the whole amount of such notes shall not be more than two hundred dollars, nor shall any such note be represented as capital stock, unless a policy be issued upon the same within thirty days after the organization of the company, upon a risk which shall not be for a shorter period than twelve months. Each of said notes shall be payable, in part or in whole, at any time when the directors shall deem the same requisite for payment of any loss and such incidental expenses as may be necessary for the transaction of said business. And no note shall be and appear as a help to said capital stock, unless the same shall be accompanied by a certificate of the register of deeds or clerk of the district court of the county where the person making such note shall reside, that the person making the note is, in his opinion, pecuniarily good and responsible for the same; and no such note shall be surrendered during the life-time of the policy for which it was given.

Agents' responsibility.

(1133) § **42**. Agents appointed by any company doing business in this Territory, to solicit for applications for insurance, collect the premiums on the same, and transact other duties of agents in such cases, shall be held personally responsible to such company for any money received by them for such company; and in case any such agent shall embezzle or fraudulently convert to his own use, or shall take or secrete the same with the intent to embezzle and convert to his own use, without the consent of such

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company, any money belonging to such company, which shall come into his possession, or shall be under his care by virtue of his agency, he shall be deemed by so doing to have committed the crime of larceny, and on conviction shall be subject to the fine and penalties provided by the statutes in such cases.

Reciprocal obligations.

(1134) § **43**. When by the laws of any state or territory, any taxes, fines, penalties, licenses, fees, deposits of moneys or securities, or capital requirements, or other obligations, or prohibitions are imposed or would be imposed on insurance companies of this Territory, doing or that might seek to do, business in such state or territory, or upon their agents therein; so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all insurance companies of such state or territory doing business within this Territory or upon their agents here.

Annual statement.

(1135) § **44**. All insurance companies heretofore organized in the Territory of Oklahoma, and now doing business in this Territory, shall be required to make the annual statement provided for and required by companies formed or organized under this act. But this shall not be construed to interfere with, or in any manner abridge the rights and privilege of any company already in existance or doing business under any law now or heretofore existing in the Territory.

Changing principal office.

(1136) § **45**. It shall be lawful for any insurance company to change the location of its principal office to any place within the Territory of Oklahoma, by a majority vote of the stock of said company, and said company shall also publish a notice of such change of location for three consecutive months immediately thereafter, in some newspaper of general circulation published in said Territory, a copy of which notice must be filed with the Auditor of the Territory.

Who may unite to form company.

(1137) § **46**. It shall be lawful for any number of persons, not less than twenty-five, residing in any county in this Territory, who collectively shall own property not less than twenty-five thousand dollars in value, which they desire to insure, to form themselves into a company for mutual insurance against loss or damage by fire, lightning and hail, which corporation shall possess other powers and be subject to other duties of corporations, and the corporate name thereof shall embrace the name of the county in which the business office of the said company shall be located.

Directors

(1138) § **47**. Every company so formed shall choose of that number not less than five nor more than thirteen directors, to manage the affairs of such company, who shall hold their office for one year, or until others are elected and qualified, and such directors shall choose one of their number president, vice-president, secretary and treasurer, and said treasurer shall give such bond as may be required by the board of directors of said company, and said company may also require the secretary thereof to give such bonds.

Articles to be filed.

(1139) § **48**. The directors of such company shall file their articles of incorporation, together with a copy of their by-laws

and the names of the officers of such company, in the office of the county clerk, or the auditor of the county in which such company is located, and shall keep a record of sheir proceedings in a book kept for that purpose, together with the names of all persons insured and the amount each person is insured, which record shall be kept open for inspection to all the members in such company at the office of the secretary thereof.

May issue policies.

(1140) § **49.** The directors of such company may issue policies, signed by the president and secretary, agreeing in the name of the company to pay all losses or damage by fire, lightning and hail, for a term not exceeding five years, to the holder of such policies, not exceeding the sum named in such policy.

Duty of company in hail insurance.

(1141) § **50.** In all cases of insurance against loss or damage by hail, it shall be the duty of such company to keep a separate and distinct record of all interest, premiums and policies of insurance relating or pertaining to such hail insurance, and no note, premium, undertaking or policy of insurance which shall be received, issued or delivered for any insurance against loss by hail shall be used in any connection with insurance against loss or damage by reason of any other cause, and that no moneys, premiums or funds arising out of or received for insurance against loss or damage by hail shall be used in the payment of any loss or damage by reason of fire or lightning and that no moneys, premiums or funds arising out of, or received for insurance against loss or damage by fire and lightning shall be used in the payment of any loss or damage by hail.

Obligation of insured against hail.

(1142) § **51.** Every person insuring grain against loss or damage by hail shall, except where cash premium is paid, execute and deliver to such company his promissory note, bearing even date with the policy issued to him therefor, together with such security as may be required by the board of directors, or the by-laws of such company. In case of insurance against loss or damage by hail, the directors of such company may issue policies signed by the president and secretary, agreeing in the name of the company, to pay all losses or damages by hail, or such *pro rata* share of such loss or damage as can be paid out of the highest limit of the liabilities of the members, which liabilities shall be established by the by-laws of such company, before the issuing of any policy of insurance against loss or damage by hail.

Appointment of hail loss adjusters.

(1143) § **52.** It shall be the duty of the board of directors to appoint one or more adjusters, prescribe their duties and fix their compensation, requiring them to report to the president or secretary upon all losses or damage by hail adjusted by them. Upon any loss or damage by hail, the party sustaining the same shall immediately notify the secretary or a duly appointed adjuster of such loss or damage. In case the adjuster and party sustaining the loss cannot agree, the claimant may then appeal, as provided for in section 1146, and notice of loss or damage by hail shall be the same as prescribed in said section 1146.

What by-laws may provide regarding hail department.

(1144) § **53.** It shall be lawful for any company organized under this act, to provide in their by-laws for creating a fund of not to exceed fifteen thousand dollars in the hail department, and

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the sum of not to exceed three thousand dollars in the fire and lightning department, the by-laws to set fourth the manner in which such funds shall be created and the purpose to which they shall be applied.

Obligations of insured against fire and lightning.

(1145) § **54**. Every person insured against loss or damage by fire and lightning, shall give his undertaking, bearing even date with the policy so issued to him, binding himself, his heirs and assigns to pay his *pro rata* share to the company of all losses or damage by fire and lightning, which may be sustained by any member thereof, and every such undertaking shall within five days after the execution thereof, be filed with the secretary in the office of said company and shall remain on file in said office, except when required to be produced in court as evidence. He shall also at the time of receiving such insurance pay such percentage in cash or such reasonable sum named in the policy, as may be required by the rules and by-laws of the company.

In case of loss.

(1146) § **55.** Every member of said company who may sustain loss or damage by fire, and lightning, shall immediately notify the secretary of said company, or in case of his absence, the president thereof, specifying the property destroyed, the damage and cause thereof, which officer shall forthwith ascertain and adjust the amount of such loss or damage, or who shall forthwith convene the directors of such company, whose duty it shall be to appoint a committee of not more than three members of said company, to ascertain the amount of such loss, and in case of the inability of the parties to agree upon the amount of such damage, the claimant shall choose a disinterested party and the company shall choose a disinterested party, who shall constitute a board of arbitration to settle such loss, and in case these parties cannot agree, they shall choose a third party to act with them, and said board of arbitration shall have power to examine witnesses and determine all matters in dispute, and the decision of said board shall be final.

May classify property

(1147) § **56**. The company, under the provisions of this act, may classify property insured at the time of issuing the policy thereon, under different rates, corresponding as nearly as may be to the greater or less risk from fire or loss which may attach to each several building or personal property insured, or damage by hail. Whenever the amount of any loss shall be ascertained, and there are not sufficient funds in the treasury to pay such loss or damage, the president or secretary shall convene the directors of said company, who shall make assessments on the property insured, taking in connection the rate of premium under which it may have been classified: *Provided, however*, That no assessment for loss or damage by hail shall be made prior to the first day in September of the year in which said loss occurred,

Secretary to collect assessments.

(1148) § **57**. It shall be the duty of the Secretary, whenever such assessment shall have been completed, to notify every person composing such company by letter sent to their postoffice address, of the amount of such loss, and the sum due from him as his share thereof, and the time when, and to whom, such payment is to be made, and such time shall not be less than thirty days nor

more than sixty days from the time of such notice. And no company organized under the provisions of this act shall be liable in any action at law or otherwise, for the recovery of any loss or damage by hail before the fifteenth day of November of the year in which loss occurred.

Suits.

(1149) § **58**. Suits at law may be brought against any member of such company who shall refuse or neglect to pay any assessment made upon them by the provisions of this act, and the directors of such company so formed who shall wilfully neglect to perform the duties imposed upon them under the foregoing sections of this act shall be liable in their individual capacity to the person sustaining such loss.

Cannot insure property outside of county.

(1150) § **59**. No company formed under the provisions of this act shall insure any property outside the limits of the county in which such company is located, nor shall they insure any property other than detached dwellings and their contents, farm buildings and their contents, school houses and school furniture therein, church buildings and furniture therein, live stock only on the premises or running at large and hay or grain in bin or stack, or growing grain against damage by hail, nor shall they insure any property within the limits of any incorporated city or village in this Territory.

Election of directors.

(1151) § **60**. The directors of each company so formed, shall be chosen by a vote at the annual election thereof, which shall be held on the first Tuesday after the first Monday in January of each year and each member shall have one vote; but no person shall vote by proxy at such election: *Provided*, That any company organized under the provisions of this act whose policies of insurance shall not run for a longer period than one year, all persons holding policies of insurance therein during the year immdiately preceding the annual election shall be considered as members of said company, and shall be entitled to vote at such election.

Statement of condition.

(1152) § **61**. It shall be the duty of the secretary of every company as aforesaid, to prepare a statement, showing the condition of such company on the Tuesday preceding the annual election, which statement shall contain the amount insured, the number of policies issued and to whom, and the amount insured by each policy, and other matters pertaining to the interest of such company, which statement shall be filed in the office of the county auditor in the county in which such company is located, on or before the fifteenth day of January of each year, and which statement shall also be read to the members at their annual meeting, or so much thereof as may be required by the members present.

Withdrawals.

(1153)§ **62**. Any member of such company may withdraw therefrom at any time by giving ten days notice to the president in writing, or to the secretary thereof, and by paying his share of all claims existing at the expiration of the ten days, against said company, and the directors or a majority thereof, shall have power to annul any policy by giving ten days notice in writing to the holder thereof.

Non-residents.

(1154) § **63**. Non-residents of any county in this Territory

owning property therein may become members of any company founded under this act and shall be entitled to all the rights and privileges pertaining thereto, except that it shall not be lawful for such non-residents to become directors in such company.

By-laws.

(1155) § **64**. Any company so formed may adopt such by-laws for its regulation as are not inconsistent with the provisions of this act and may therein prescribe the compensation for its officers.

Duration of Company.

(1156) § **65**. No company formed under this act shall continue for a longer term than thirty years.

Holder of policy may surrender same for cancellation at any time.

(1157) § **66**. The holder of any policy of insurance against loss or damage to property by fire or other casualty, hereafter issued by any insurance company doing business in this Territory, may, notwithstanding any provision thereof, or contract to the contrary, at any time surrender the same for cancellation; and upon such surrender, the company issuing such policy shall retain or receive such proportion and no more of the premium paid or agreed to be paid, as corresponds with the usual short rates upon term policies, as adopted and maintained by the Minnesota and Dakota fire underwriters' union of St. Paul, Minnesota, for the time the policy remained in force.

Policy forfeited, when; insurer to give notice, what notice to contain.

(1158) § **67**. No such policy of insurance shall, by virtue of any condition, or provision thereof, be forfeited, suspended or impaired for non-payment of any note or obligation taken for the premium, or any part thereof, unless the insurer shall, not less than thirty days prior to the maturity of such premium, note, or obligation, mail, postage prepaid to the assured at his usual postoffice, a notice stating:

First. The date when such note or obligation will become due.

Second. The amount of principal and interest, that will then be due.

Third. The effect upon the policy of non-payment.

Fourth. Such notice shall further inform the assured of his right, at his own election, either to pay in full, and keep the policy in full force, or to terminate the insurance by surrendering the policy, and paying such part of the whole premium as it shall have earned, and must further state the amount, which assured is lawfully required to pay, or which, on account of previous payment, may be due him, in case of his election, to terminate the insurance on the day of the maturity of the premium, note or obligation.

Premium defined.

(1159) § **68**. The term "premium," within the meaning of this act, includes policy fees, in excess of two dollars, on any one policy, and all other sums of money paid, or agreed to be paid in consideration of a policy of insurance.

Mortgage and application must be separate and distinct.

(1160) § **69**. It shall be unlawful for any insurance company or any agent or solicitor therefor, within this Territory, to take or procure to be taken, upon the property to be insured or any other property, a chattel mortgage securing the payment of the premium due or to become due (including policy fees) or any part thereof, unless such chattel mortgage shall be printed or written upon a separate and distinct paper from the application, and no

mortgage given in violation of the provisions of this section shall be valid or binding upon the party executing the same, but shall in all things be null and void.

Penalty

(1161) § **70.** Any insurance company, or any agent or solicitor thereof, violating the provisions of this act, shall be deemed guilty of a misdemeanor. And such company shall further forfeit all its rights and privileges under its charter.

ARTICLE 12.—MINING AND MANUFACTURING CORPORATIONS, ETC.

SECTION.
1. Corporations for mining and manufacturing; limitation.
2. Loans to stockholders forbidden.
3. Accounts and statements.
4. Stockholders liable for labor.
5. Annual report shall be made and published.
6. Demand for statement.
7. May have office outside of Territory.
8. Violation of law.
9 Ditch corporations.
10. Right of way.
11. Duty to furnish water.
12. Protection from injury.
13. Flumes.
14. Tunnels.
15. Acquiring right of way.
16. Non-user forfeits rights.
17. Time extended for completion of works.
18. Parties using water from irrigating ditch responsible for damages.

Corporations for mining, manufacturing, etc., limited to twenty years.

(1162) **1.** Corporations for mining, manufacturing and other industrial pursuits may be formed as provided in this article; and such corporations have all the rights, and are subject to all the duties, restrictions, and liabilties therein mentioned, so far as the same apply or relate to such corporations, but the term of existence of any such corporation shall not exceed twenty years.

Loans to stockholders forbidden.

(1163) § **2.** The purposes for which every such corporation shall be formed must be distinctly and definitely specified in the articles of incorporation, and it must not appropriate its funds to any other purpose, nor must it loan any of its money to any stockholder therein; and if any such loan or misappropriation be made, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan or misappropriation, and interest, for all the debts of the corporation contracted before the repayment of the sum so loaned or misappropriated.

Accounts; statements.

(1164) § **3.** Regular books of accounts of all the business of such corporations must be kept, which, with the vouchers, shall be at all reasonable times open for the inspection of any of the stockholders; and as often as once in each year a statement of such accounts shall be made, by order of the directors, and laid before the stockholders.

Stockholders liable for labor.

(1165) § **4.** The stockholders of any corporation formed for the purposes mentioned in this article shall be jointly and severally liable, in their individual capacities, for all debts due to mechanics, workmen and laborers employed by such corporation, which said liability may be enforced against any stockholders by an action at any time after an execution against such corporation shall be returned not satisfied: *Provided*, Such action be commenced within four months: *And provided always*, That if any stock-

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holder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to contribute their part of the sum so paid by him as aforesaid, and may sue them jointly or severally, or any number of them, and recover in such action the ratable amount due from the person or persons so sued.

Annual report shall be made and published.

(1166) § **5.** Every such corporation shall annually, within twenty days from the first day of January, make a report, which must be published in some newspaper published at or nearest to the place where the business of said corporation is carried on, which report must state the capital stock and the amount thereof actually paid in, the amount and nature of its indebtedness and the amounts due the corporation, the number and amount of dividends and when paid, and the net amount of profits. The said report must be signed by the president and a majority of the directors, and be verified by the oath of the president or secretary of the corporation, and filed in the office of the register of deeds of the county where the business of the corporation is carried on; any person who wilfully neglects, fails or refuses to make, sign or publish the report as provided in this section shall be guilty of a misdemeanor.

Demand for statement.

(1167) § **6.** Whenever any person or persons owning twenty per cent of the capital stock of any corporation formed for the purposes mentioned in this article shall present a written request to the treasurer thereof that they desire a written statement of the affairs of the corporation, he must make such statement under oath, embracing a particular account of all its assets and liabilities in detail, and deliver the same to the persons presenting the written request; within twenty days after such presentation; and such treasurer shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of such corporation demanding an examination thereof; the treasurer, however, shall not be required to make or deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer neglect or refuse to comply with the provisions of this section, he shall forfeit and pay to the person or persons presenting such written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in an action.

May have office outside of territory.

(1168) § **7.** Any corporation formed for the purposes mentioned in this article may provide in the articles of incorporation for having a business office without this Territory, at any place within the United States and to hold any meeting of the stockholders or directors of the corporation at such office so provided for; but every such corporation having a business office out of this Territory must have its main office for the transaction of business within this Territory, to be also designated in such articles.

Violation of provisions of this act.

(1169) § **8.** If any such corporation shall wilfully violate any of the provisions of this chapter relating or applying to such cor-

poration, and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable in an action founded upon this statute for all debts contracted after such violation.

Ditch corporation; requisites.

(1170) § **9.** In addition to the matters required by section 956 every corporation formed for the purpose of constructing a ditch to convey water to any mines, mills or lands, to be used for mining, manufacturing, milling, or for the irrigation of lands, must, in the articles of incorporation, specify as follows: The stream or streams from which the water is to be taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch as near as may be, and the use to which the said water is intended to be applied.

Right of way.

(1171) § **10.** Any ditch corporation shall have the right of way over the line named in the articles, and shall also have the right to run the water of the stream or streams named in the articles, through their ditch: *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those granted under this article, and acquired by virtue of such articles of incorporation. Nor shall the water of any stream be diverted from its original channel to the detriment of any miners, millmen, or others along the line of said stream, who may have a priority of right; and there shall be at all times left sufficient water in said stream for the use of miners and agriculturists along said stream.

Duty to furnish water.

(1172) § **11.** Every ditch corporation must furnish water to the class of persons using water in the way and for the purpose for which the articles of incorporation declare the water obtained by the corporation is to be used, whether miners, manufacturers, millmen or farmers, whenever they shall have water in their ditch unsold, and must at all times give the preference to the use of the water in such ditch to the class of persons so named in the articles.

Protection from injury.

(1173) § **12.** Every ditch corporation must keep the banks of its ditch in good condition, so that the water shall not be allowed to escape from it to the injury of any mining claim, road, ditch, or other property; and whenever it is necessary to extend or construct any ditch over, across or above any lode or mining claim, or public highway, the corporation shall, if necessary to keep the water of said ditch out or from any such lode, claim or highway, flume the ditch so far as necessary to protect such claim, property or highway, from the water of such ditch.

Flumes.

(1174) § **13.** In addition to the matters required in section 957, every corporation formed for the purpose of constructing a flume, must in its articles of incorporation, specify as follows: The place of beginning, the termini, and the route so near as may be, and the purpose for which such flume is intended. Such corporation shall have the right of way over the line named in its articles: *Provided*, It does not conflict with the right of any fluming, ditching or other corporation, or with the prior water-rights of any person.

Tunnels.

(1175) § **14.** In addition to the matters required by section 957, every corporation formed for the purpose of running and exca-

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vating a tunnel for mining for gold, silver or other ore, or quartz or coal, must, in the articles of incorporation, specify as follows: Where said tunnel is to be run; the place of commencement; the course and termination; and the metals, minerals or ores designed to be excavated. Through all lodes crossed by such tunnel such corporation shall have the right of way.

Acquiring right of way.

(1176) § **15.** The right of way granted in this article to any ditch, flume or tunnel corporation, may be acquired in the same manner, and by like proceedings as provided for railroad corporations.

Non-user forfeits rights

(1177) § **16.** Every corporation formed under the provisions of this article must, within ninety days from the date of the issue of its certificate of incorporation, commence the construction of its works or the transaction of its business, and must prosecute the work or business with due diligence until the same is completed; and the time of completion of its works shall not extend beyond a period of two years from the time work was commenced as aforesaid; and any such corporation failing to commence work within ninety days from the date of its certificate, or failing to complete the same within two years from the time of commencement as aforesaid, shall forfeit all right to the route so claimed, and the same shall be subject to be claimed by any other corporation: *Provided*, That this section shall not apply to the construction of any works through or over any grounds owned by such corporation.

Time extended for completion of works.

(1178) § **17.** [Every incorporated company transacting business within this Territory shall be allowed twice the length of time now allowed under chapter 18 for the completion of its works, without working any forfeiture whatever until the expiration of such extended time, and then only upon failure to complete such works.]

Parties using water responsible for damages.

(1179) § **18.** All persons using the waters of any irrigation ditch in this Territory, shall be responsible for all damages occasioned by such waters, after the same have been diverted from such ditch.

ARTICLE 13.—BRIDGE CORPORATIONS.

SECTION.

1. What the articles of incorporation must include.
2. County board must give authority.
3. Forfeiture
4. Bridge must be kept in good condition.
5. Toll rates must be posted.
6. Penalty for allowing bridge to be in bad condition.
7. Collection of tolls.
8. Forcible passing,
9. Annual report to county board.
10. Report must be published; penalty for neglect.

What the articles of incorporation must include.

(1180) § **1.** The term of existence of a bridge corporation shall not exceed twenty years; and in addition to the matters required by section 957, every corporation formed for the purpose of constructing a bridge over any stream of water must, in the articles of incorporation, specify as follows: The place where such bridge is to be built over what stream; that the banks on both sides of the stream where such bridge is to be built are owned by such corporation, or that it has obtained in writing the con-

sent of the owners of the banks, where the bridge is to be built, to build the bridge; or that the banks at such place are included within and part of a public highway, and in such case that the consent in writing of the board of county commissioners of the county or counties for the erection of such bridge by such corporation has been obtained, and it must file a certified copy of its articles of incorporation in the office of the register of deeds of the county or counties in which its bridge or any part thereof is situated or to be located.

County board must give authority.

(1181) § **2.** No such corporation shall construct or take tolls on a bridge until authority is granted therefor by the board of county commissioners of the county or counties in which it is to be located.

Forfeiture.

(1182) § **3.** Every such corporation also ceases to be a body corporate:

First. If, within six months from the issue of its certificate by the Secretary of the Territory, it has not obtained such authority from the board or boards of county commissioners, as mentioned in the last section; and if, within one year thereafter, it has not commenced the construction of its bridge, and actually expended thereon at least ten per cent of its capital stock.

Second. If, within three years from the issuing of its certificate of incorporation, the bridge be not completed.

Bridge must be kept in good condition.

(1183) § **4.** Every bridge corporation must at all times keep the bridge in good and safe condition for travel, both night and day unless it be rendered impassable by reason of floods or high water; and if it be destroyed by fire or other causes the corporation must rebuild within a period of one year from such destruction or its corporate rights shall be forfeited and cease to exist.

Toll rates must be posted.

(1184) § **5.** Such corporation, previous to receiving and as a precedent condition to the right to receive any toll upon the use of its bridge, must set up and keep in a conspicuous place on the bridge, a board on which must be written, painted or printed, in a plain and legible manner, the rates of toll which shall have been prescribed by the board of county commissioners; and if such corporation shall demand or receive any greater rate of toll than the rate so prescribed, it shall be subject to a fine of ten dollars for each offense, to be recovered in an action by the party aggrieved or by any public officer making the complaint.

Penalty for allowing bridge to be in bad condition.

(1185) § **6.** No such corporation shall demand or receive toll whenever said bridge is not in good and safe condition for use, and any person having paid toll on such bridge and finding the same in a bad or unsafe condition for loaded wagons or teams, shall have the right to make complaint before any justice of the peace in the county or counties in which the bridge is located, who shall thereupon summon the said corporation, through its toll-gatherer, officers or directors, to appear before him to answer the complaint, within not over five days from the date thereof, and if upon the hearing it be found that the bridge is not in a good and safe condition for use, or is in a bad condition and unsafe for loaded wagons or teams, the justice of the peace must impose a fine not less than ten dollars nor more than fifty dollars

upon such corporation, and he must thereupon also enter judgment and issue his order that no toll be collected upon said bridge until it is put in good repair and safe condition.

Collection of toll.

(1186) § **7.** Each toll-gatherer may prevent from passing through his gate all persons, animals or vehicles subject to toll until he shall have received, respectively, the tolls authorized to be collected; and if he wilfully and unreasonably hinder or delay any such persons, animals or vehicles from passing, when the lawful toll has been paid or tendered, he shall forfeit and pay for each offense a sum not less than five dollars nor more than twenty-five dollars, to be recovered in an action by the party aggrieved.

Forcible passing.

(1187) § **8** Every person who forcibly, willfully or fraudulently passes over any such bridge without having paid or tendered the legal toll for himself and the property in his charge, shall, for each offense, forfeit and pay to the corporation injured a sum not exceeding twenty-five dollars, to be recovered in an action in the name of such corporation.

Annual report must be made to the county board.

(1188) § **9.** The president and secretary of every bridge corporation must annually, within twenty days from the first day of January, report under oath to the board of county commissioners of the county in which the articles of incorporation are filed, specifying as follows: The costs of constructing and providing all necessary appendages and appurtenances of their bridge; the amount of all moneys expended thereon, since its construction, for repairs and incidental expenses; the capital stock, how much paid in and how much actually expended thereof; the amount received during the year for tolls and from all other sources, stating each separately; the amount of dividends made; the indebtedness of of the corporation, specifying for what it was incurred; the net amount of profits; and such other facts and particulars respecting the business of the corporation as the board of county commissioners may require.

Report must be published, penalty for neglect.

(1189) § **10.** Such corporation must cause the report required in the preceding section to be published for four weeks in a newspaper published in the town or city nearest such bridge. A failure to make such report and to publish it as aforesaid, subjects the corporation to a penalty of two hundred dollars; and for every week permitted to elapse after such failure, an additional penalty of fifty dollars, payable in each case to the county or counties from which the authority to construct and take tolls is derived, at the suit of such county or counties. All such cases must be reported by the boards of county commissioners to the district attorney, who must commence an action therefor.

ARTICLE 14.—RELIGIOUS, EDUCATIONAL AND BENEVOLENT CORPORATIONS. Chap. 18.

General Provisions.

SECTION.
1. Number of trustees.
2. What articles of incorporation must include.
3. Amount of property allowed.
4. Must make annual report.
5. May sell or mortgage property.
6. By-laws.
7. Subsequent members.
8. Membership rights are personal.

Religious Corporations.

SECTION.
9. Trustees of religious corporations.
10. Members of any church may form corporation.
11. Title vests in successors, in trust.

Institutions of Learning.

SECTION.
12. Articles of incorporation for institutions of learning.
13. Property held, how.
14. Objects for expenditure.
15. Powers of corporation.
16. Degrees conferred.
17. Mechanics and agriculture.

Cemetery Corporations.

SECTION.
18. Cemetery corporations may hold real estate.
19. Survey and plat.
20. Powers of corporation.
21. Use of proceeds from sale of lots.
22. Payment of debts.
23. Previous burials protected.
24. Qualification of voters.
25. Interment renders lot inalienable.
26. Lot is exempt.

Other Benevolent Corporations.

SECTION.
27. Benevolent and charitable corporations.

(1190) § **1.** Persons associated together for religious, educational, benevolent, charitable or scientific purposes may elect trustees or directors, not less than three nor more than eleven, and may incorporate themselves as generally provided for in this chapter. Number of trustees.

(1191) § **2.** In addition to the requirements of section 957, the articles of incorporation of any such association must set forth the holding of the election for trustees or directors, the time and place the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election. What articles of incorporation must include.

(1192) § **3.** All such corporations may hold all the property of the association owned prior to incorporation, as well as that acquired thereafter in any manner, and transact all business relative thereto; but no such corporation shall own or hold more real prop- Amount of property limited.

erty than may be reasonably necessary for the business and objects of the association; and no such corporation for religious or charitable purposes shall acquire or hold real property of a greater value than fifty thousand dollars.

Must make annual report

(1193) § **4.** The trustees or directors of all such corporations must annually make a full report of all their property, real and personal, including property held in trust by them, and of the condition thereof, and of all their affairs, to the members of the corporation for which they are acting.

May sell or mortgage property.

(1194) § **5.** Corporations of the character mentioned in this article may sell, exchange or mortgage any or all property held or owned by them in the manner determined by such corporations.

By-laws.

(1195) § **6.** Such corporation may, in their by-laws or articles of incorporation, in addition to the provisions of sections 957 and 976, provide for:

First. The qualification of members, mode of election, and terms of admission to membership.

Second. The fees of admission, and dues to be paid to their treasury by members.

Third. The expulsion and suspension of members for misconduct or non-payment of dues; also for restoration to membership.

Fourth. Contracting, securing, paying and limiting the amount of their indebtedness.

Fifth. Other regulations not repugnant to the law of the land, and consonant with the objects of the corporation.

Subsequent members to have equal rights

(1196) § **7.** Members admitted after incorporation have all the rights and privileges, and are subject to the same responsibilities, as members of the association prior thereto.

Membership rights personal.

(1197) § **8.** No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided.

Trustees of religious corporations

(1198) § **9.** The board of trustees, or other officers of any religious corporation, may be chosen at such times and in such manner as may be in conformity to the rules, usage or general discipline of such church.

Members of any church may form association without incorporation

(1199) § **10.** The members of any church or religious society, not less than three, who by its rules, usage and general discipline, or otherwise, do not desire to organize and become ncorporated under the forgoing provisions relating to corporations may organize and become corporate, capable of suing aud being sued, holding, purchasing and receiving title to real estate and other property by devise, gift, grant or other conveyance, with power to mortgage, sell or convey the same, or any part, parcel or portion thereof, by adopting and signing articles containing:

First. The name of the church, society, association or corporation, its general purpose and plan of operation and its place of location.

Second. The terms of admission and qualifications of membership, and the selection of officers, and the filling of vacancies, and the manner in which the same is to be governed and managed. such articles shall be recorded in the office of the Secretary of the

Territory, and also in the office of the register of deeds of the county in which such church, society, association or corporation is located; and thereupon such church, society, association or corporation shall have all the powers hereinbefore provided, and may adopt and establish by-laws and make all rules and regulations deemed necessary and expedient for the management of its affairs in accordance with law.

Title vests in successors, in trust.

(1200) § **11.** All grants or deeds from private individuals, or acts of legislative bodies, transferring, conveying or granting real estate in this Territory to any bishop, dean, rector, vestryman, deacon, director, minister, or any other officer or officers of any church or organized religious society in trust for the use and benefit of such society of which they are such officer or officers, which have been or may be made, done or executed, shall vest in their successor or successors in office, or other officer which such society may at any time designate, all the legal or other title, to the same extent and in all respects the same, as trustee of such trust, for the use and benefit of such society, which such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers, had under such grant, deed or act; and all transfers or sales made by such officer or officers so acquiring title by virtue of this act by succession in office shall have all the validity, force and effect that it would have had had it been made by such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers, while holding under and by virtue of such grant, deed or act of such Legislative body.

[For limitation of amount of real estate which any religious body may own, see section 956.]

Articles for instructions of learning.

(1201) § **12.** Any corporation formed for the purpose of establishing an institution of learning must, in addition to the requirements mentioned in section 957, set forth in its articles of incorporation the particular branch or branches of science, literature and the arts proposed to be taught; and, if the institution is to be of the rank of a college or university, the number and designation of the professorships to be established.

Property held, how.

(1202) § **13.** Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of itself or any contributor to the endowment thereof.

Objects for expenditure.

(1203) § **14.** The trustees or directors of any such corporation shall faithfully apply all the funds collected, or the proceeds of the property belonging to the institution, according to their best judgment, in erecting, completing or repairing suitable buildings, in supporting necessary officers, instructors, agents and employes, and in procuring books, maps, charts, globes and philosophical, chemical, and other apparatus or cabinets, necessary to the objects and success of the institution; and all donations, devises or bequests made to it for particular purposes when accepted, shall be applied in conformity with the express condition of the donor or devisor.

Powers of corporation

(1204) § **15.** Such corporation has power to appoint a president or principal for the institution, and such professors, tutors and other agents and officers, as may be necessary, and to displace

any of them as the interests of the institutions may require; to fill vacancies, to prescribe aud direct the course of studies and the discipline to be pursued and observed in the institution, and the rates of tuition in the same; and the president and professors shall constitute the faculty of such institution; and they have power to enforce the rules and regulations enacted for the government and discipline of the students, and to suspend and expel offenders, as may be deemed expedient.

Degrees conferred.

(1205) § **16.** Every such corporation having the rank of a college or university. has power to confer, on the recommendation of the faculty, all such degrees or honors as are usually conferred by colleges and universities in the United States, and such others, having reference to the course of studies and the worth and accomplishment of the student, as may be deemed proper.

Mechanics and agriculture.

(1206) § **17.** Such corporation may connect with its institution, to be used as a part of its course of education, any mechanical shops or machinery, or lands for agricultural purposes, not exceeding three hundred and twenty acres, to which may be attached all necessary buildings for carrying on the mechanical and agricultural purposes of such institution.

Cemetery corporations may hold limited amount of real estate.

(1207) § **18.** Every cemetery corporation has power to purchase or take by gift, grant or devise, and to hold real property, not exceeding eighty acres, for the sole use and purpose of a burial ground, and to lay out the same into blocks and lots with convenient avenues and walks, and to sell the lots for the sole use and purpose of burying the dead; and it may hold all such personal property as the legitimate and necessary purposes of the corporation may require.

Surveys and plat.

(1208) § **19.** Such corporation shall cause its land, or such portion thereof as may from time to time become necessary for that purpose, to be surveyed into lots, avenues and walks, and platted, and the plat of ground as surveyed shall be acknowledged and recorded in the office of the register of deeds of the county. Each lot shall be regularly numbered by the surveyor, and such number shall be marked on that plat and recorded.

Powers of corporation.

(1209) § **20.** Such corporation has power to inclose, improve and embellish its grounds, avenues and walks, and to erect buildings or vaults for its use, and to prescribe in its by-laws, rules for the sale, inclosure and ornamentation of lots and for erecting monuments or gravestones thereon; and to prohibit any use, division, improvement or ornamentation of any lot which the corporation may deem improper; and to make other by-laws and acts to the end that all the appliances, and conveniences and benefits of a public and private cemetery may be obtained and secured.

Use of proceeds from sale of lots.

(1210) § **21.** The proceeds arising from the sale of lots, after deducting all expenses of purchasing, inclosing, laying out and improving the ground, and of erecting buildings, shall be exclusively applied, appropriated and used in protecting, preserving, improving and embellishing the cemetery and its appurtenances, and to paying the necessary expenses of the corporation, and

must not be appropriated to any purposes of profit to the corporation or its members.

Payment of debts.

(1211) § **22**. At least fifty per cent of the gross proceeds of sales of blocks, lots or graves must be applied, as often as every six months, to the payment of the debts and obligations of the corporation.

Previous burials protected

(1212) § **23**. When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase continue to own the same, and are members of the corporation, as hereinafter provided, with all the privileges the purchase of a corporation lot confers.

Qualifications of voters.

(1213) § **24**. At each subsequent election of officers of any such corporation, held after the first annual election, the owner or owners of a lot in the cemetery, and none other, shall be entitled to one vote at such election, or for any other purpose, and no more than one vote; and shall, by virtue of such proprietorship, be a member of the corporation, and eligible to any of its offices; but if there be more than one proprietor of any such lot, then such one of the proprietors as the majority of them shall designate may cast the one vote as aforesaid; and each trustee or director shall be the sole proprietor of a lot in such cemetery.

Interment renders lot inalienable.

(1214) § **25**. Whenever an interment is made in any lot transferred to individual owners by the corporation, the same thereby, while any person is buried therein, becomes forever inalienable, and descends in regular line of succession to the heirs at law of the owner, but any one or more of such heirs may release to any other of said heirs his or their interests in the same, and any other joint owners may release to each other in like manner.

Wholly exempt.

(1215) § **26**. All the property of every such benevolent corporation, and the lots sold by it to individual proprietors, shall be exempt from taxation, assessment, lien, attachment, and from levy and sale upon execution; and all such real property shall be exempt from appropriation for streets, roads, or any other public uses or purposes.

Benevolent and charitable corporations.

(1216) § **27**. The following associations for benevolent and charitable purposes may become incorporated, as provided in this chapter, to wit:

First. To establish and maintain hospitals and infirmaries for the cure of the sick and support of the aged and indigent, and asylums for orphans.

Second. For the mutual assistance of the members in time of sickness or necessity, and to provide a fund for this purpose by contributions of the members thereof from time to time, and for the like incidental benevolent purposes.

Third. To establish and maintain lodges, chapters and encampments of fraternities or associations commonly known as Free Masons, the Independent Order of Odd Fellows, Good Templars, Sons of Temperance, and other like benevolent orders or societies.

Fourth. To establish and maintain fire companies in any incorporated city or town.

ARTICLE 15.—AGRICULTURAL FAIR CORPORATIONS.

SECTION.
1. Agricultural fair corporations may hold property.
2. Debts limited.
3. Income and expenses.

Agricultural fair corporations may hold property.

(1217) § **1**. Agricultural fair corporations may purchase, hold or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon, and may sell, lease, or otherwise dispose of the same at at pleasure. This real estate must be held for the purpose of erecting buildings and making other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufacturers, stock raising and general domestic industry.

Debts limited.

(1218) § **2**. Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract except for the purchase of real property, for which they may create a debt not exceeding three thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally for any debt contracted or incurred in violation of this section.

Income and expenses.

(1219) § **3**. Agricultural fair corporations are not conducted for profit, and have no capital stock or income other than that derived from charges to exhibitors and fees for membership and admissions, which charges, together with the term of membership and mode of acquiring the same must be provided for in their by-laws. Such charges and fees must never be greater than to raise sufficient money to discharge the debt for the real estate and the improvemeuts thereon, and to defray the current expenses of fairs: *Provided*, That agricultural fair corporations may also be organized by three or more persons, as in the case of other corporations, with all the rights, privileges and liabilities appertaining to such corporations under the corporation laws of this Territory, including such rights and privileges as are specified in this and the two preceding sections.

ARTICLE 16.—BUILDING AND LOAN ASSOCIATIONS.

SECTION.
1. Charter.
2. Capital stock,
3. By-laws, what to contain.
4. Loaning funds.
5. Payment of loans.
6. Interest not usurious.
7. Neglect not to affect life of corporation.
8. Association may purchase at sheriff sale.
9. Validating securities.
10. Mode of incorporation.
11. Notice of intention to apply for charter.
12. By-laws.
13. Business, how managed.
14. Stock certificates.
15. Oath of officer.
16. Vacancies.
17. Lawful to receive premiums.
18. Withdrawal of stock.
19. When entitled to privileges of this article.

Charter.

(1220) § **1**. At any time when ten or more persons may desire to form a building and loan association under the provisions of this act, they shall make application to the Secretary of the

Territory in the manner prescribed by section 1229. The said Secretary is hereby fully empowered to grant charters to said associations, provided that no charter granted under or by virtue of the provisions of this act shall be for a longer period than twenty years.

Capital stock.

(1221) § **2.** The capital stock of any corporation created by virtue of this act shall at no time consist of more than two thousand five hundred shares, of two hundred dollars each, or five thousand shares of one hundred dollars each, the installments on which stock are to be paid at such time and place as the by-laws shall appoint, no periodical payment to be made exceeding two dollars on each share. Every share of stock shall be subject to a lien for the payment of unpaid installments and other charges incurred thereon, under the provisions of the charter and by-laws, and the by-laws may prescribe the form and manner of enforcing such lien. New shares of stock may be issued in lieu of the shares withdrawn or forfeited. The stock may be issued in one or more successive series, in such amount as the board of directors or stockholders may determine, and any stockholder wishing to withdraw from the said corporation shall have power to do so by giving thirty days notice of his or her intention to withdraw, when he or she shall be entitled to receive the amount paid in by him or her, and such proportion of the profits as the by-laws may determine, less all fines and other charges: *Provided*, That at no time shall more than one-half of the funds in the treasury of the corporation be applicable to the demands of withdrawing stockholders without the consent of the board of directors, and that no stockholder shall be entitled to withdraw whose stock is held in pledge for security. Upon the death of a stockholder, his or her legal representative shall be entitled to receive the full amount paid in by him or her and legal interest thereon, first deducting all charges that may be due on the stock. No fines shall be charged to a deceased member's account from or after his or her decease, unless the legal representatives of such decedent assume the future payments of the stock.

By-laws, what to contain.

(1222) § **3.** The number, titles, functions and compensation of the officers of any corporation created by virtue of this act, their terms of office, the times of their election, as well as the qualifications of electors, and the votes and manner of voting, and the periodical meetings of said corporation, and the manner and terms upon which loans shall be made and repaid shall be determined by the by-laws.

Loaning funds.

(1223) § **4.** The said officers shall hold stated meetings at which the money in the treasury, if equal to the amount of one share of stock in such corporation shall be offered for loan in open meeting and the stockholder who shall bid the highest premium for the preference or priority of loan shall be entitled to receive a loan of the full amount for each share of stock held by such stockholder: *Provided*, That good and ample security shall be given by the borrower to secure the repayment of the loan. In case the borrower shall neglect to offer security that is approved by the board of directors by such time as the by-laws may prescribe, he

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or she shall be charged with one months interest at the rate charged by the association on loans, and a fine not to exceed one dollar per share, together with any expenses incurred, and the money shall be resold at the next stated meeting. In case of non-payment of installments, or interest or premium by borrowing stockholder, for the space of six month's, payment of principal and interest, without deducting the premium paid or interest thereon, may be enforced by proceeding on their securities according to law.

Paymcnt of loans.

(1224) § **5.** A borrower may repay a loan at any time by the payment to the corporation of the principal sum borrowed, together with interest, not to exceed twelve per cent per annum, together with such per cent of premium per annum as may have been bid for the preferences or priority of such loan and any fines or charges that may be imposed upon such stockholder at the time of such repayment; or in case the amount of premium bid for the priority of such loan be deducted in advance, and the repayment thereof is made before the expiration of the eighth year after the organization of the corporation. there shall be refunded to such borrower one-eighth of the premium paid for every year of the said eight years unexpired; *Provided*: That when the stock is issued in separate series, the time shall be computed from the date of the issuing of the shares of stock on which the loan was made: *Provided further*, That when the series of stock has a less period than eight years to complete full payment thereof, there shall be refunded only *pro rata* for the unexpired term of the series: *And, provided further*, When the by-laws of the corporation prescribe a different manner and terms upon which a loan may be repaid, then the repayment can only be made in accordance with the by-laws of such corporation.

Interest not usurious.

(1225) § **6.** No premiums, fines or interest on such premiums that may accrue to the said corporation according to the provisions of this act shall be deemed usurious; and the some may be collected as debts of like amount are now by law collected in this Territory.

Neglect not to affect life of corporatton.

(1226) § **7.** No corporation created under this act shall cease or expire from neglect on the part of the corporation to elect officers at the time mentioned in their charter or by-laws, and all officers elected by such corporation shall hold their offices until their successors are duly elected and qualified.

Association may purchase at sheriff's sale.

(1227) § **8.** Any building or loan association incorporated by or under the provisions of this act, or any one heretofore or hereafter incorporated, accepting of the provisions of the same, is hereby authorized and empowered to purchase at the sheriff's or other judicial sale, or at any other sale, public or private, any real estate upon which such association may have or hold any mortgage, judgment, lien or other incumbrance, or in which said association may have an interest, and the real estate so purchased, or any other that such association may hold or be entitled to at the passage of this act to sell, convey, lease or mortgage at pleasure to any person or persons whatsoever, and all sales of real estate heretofore made by such association to any person or persons not

members of the association so selling are hereby confirmed and made valid.

Validating securities.

(1228) § **9.** All mortgages heretofore given to the building and loan associations organized under the laws of this Territory before the passage of this act or subsequent hereto, but such associations subsequently accepting the provisions hereof, be and the same are hereby declared good and valid to all intents and purposes, as though they had been made to corporations organized under the provisions of this act.

Mode of incorporation.

(1229) § **10.** The charter of an intended corporation under the provisions of this act must be subscribed by ten or more persons, a majority of whom must be citizens of this Territory, and set forth:

First. The name of the corporation.

Second. The purpose for which it is formed.

Third. The place where its principal office, or the business is to be transacted.

Fourth. The time for which it is to exist.

Fifth. The names and residences of the subscribers, and the number of shares subscribed by each.

Sixth. The number of its directors, and the names and residences of those who are selected as directors, and who shall hold their office until the next annual election, or until their successors are elected and qualified.

Seventh. The amount of its capital stock, and the number and par value of its shares.

Notice of intention to apply for charter.

(1230) § **11.** Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation printed in the proper county for three weeks, setting forth briefly the character and object of the corporation to be formed, and the the intention to make application therefor. The certificate for a corporation under the provisions of this act, shall set forth all that is hereinbefore required to be set forth, the same shall be acknowledged by at least five of the subscribers thereto before a notary public or other officer authorized to administer oaths, and they shall also make and subscribe an oath or affirmation before him, to be indorsed on said certificate that the statements contained therein are true. The said certificate, accompanied with proof of publication of the notice as hereinbefore provided, shall then be produced to the Secretary of the Territory, who shall examine the same and if he find it to be in proper form, as specified in the foregoing sections, he shall approve thereof, and indorse his approval thereon, and issue letters patent in the usual form incorporating the subscribers and their associates and successors into a body politic and corporate in deed and in law, by the manner chosen; and the said certificate shall be recorded in the office of the Secretary of the Territory, in a book to be by him kept for that purpose, and a certified copy of the said certificate shall be recorded in the office of the register of deeds of the county where the principal business of the association is transacted. Certified copies of the records thereof shall be competent evidence for all purposes in the several courts of this Territory.

Chap. 18.

By-laws.

(1231) § **12.** The by-laws of every corporation created under the provisions of this act or of those accepting the provisions of the same, shall be deemed and taken as its law, subordinate to this statute. They shall be made by the stockholders, or the board of directors, at their annual meeting or at any stated meeting of the board of directors. They shall prescribe the time and place of meeting of the corporation, the power and duty of its officialy, the fines and penalties to be imposed upon delinquents and borrowers for the non-payment of dues, interest and premiums, and such other matters as may be pertinent and necessary for the business to be transacted.

Business; how managed.

(1232) § **13.** The business of every corporation created hereunder, or of those accepting the provisions of the same, shall be managed and conducted by a president, a board of directors or trustees, a secretary and treasurer, and such other officers or agents as the by-laws may provide. The directors or trustees shall be elected annually by the stockholders or members, at the time fixed by the by-laws, and shall hold their office until others are chosen and qualified in their stead; the manner of such choice, and of the choice or appointment of all other agents or officers, shall be prescribed by the by-laws, The number of directors or trustees shall not be less than five, one of whom shall be chosen president by the directors, or by the members of the corporation, as the by-laws may direct; the members of said corporation may, at a meeting called for that purpose, determine, fix or change the number of directors or trustees that shall thereafter govern its officers, and a majority of the whole number of such directors or trustees shall be necessary to constitute a quorum. The treasurer shall give bond in such sum, and with such sureties as shall be required by the by-laws, for the faithful discharge of his duties, and he shall keep the moneys of the corporation in a separate bank account, to his credit as treasurer, and if he shall neglect or refuse so to do, he shall be liable to a penalty of fifty dollars for every day he should fail so to do, to be recovered at the suit of any informer in an action of debt.

Stock certificates.

(1233) § **14.** The directors of such corporation shall procure certificates or evidences of stock, and shall deliver them signed by the president and secretary and seased with the common seal of the corporation to each person or party entitled to receive the same according to the number of shares by him, her or them respectively held, which certificate or evidence of stock shall be transferable at the pleasure of the holder in person or by attorney duly authorized as the by-laws may prescribe, subject, however, to all payments due or to become due thereon, and the assignee or party to whom the same shall have been so transferred shall be a member of said corporation, and have and enjoy all the immunities, privileges and franchises, and be subject to all the liabilities, conditions and penalties incident thereto, in the same manner as the original subscriber or holder would have been, but no certificate shall be transferred so long as the holder is indebted to said company, unless the board of directors shall consent thereto.

(1234) § **15**. No person acting as judge or officer for holding an election for any such corporation shall enter upon the duties of his appointment until he take and subscribe an oath or affirmation before a notary public or other person qualified by law to administer oaths, that he will discharge the duties of his office with fidelity, that he will not receive any rate but such as he really believes to be legal, and if any such judge or officer shall knowingly or wilfully violate his oath or affirmation he shall be subject to all the penalties imposed by law upon the officers of the general election of this Territory for violating their duties, and shall be proceeded against in like manner and with like effect.

Oath of officer.

(1235) § **16**. In case of the death, removal or resignation of the president, or any of the directors, secretary, treasurer or other officer of such company, the remaining directors may supply the vacancy thus created until the next general election,

Vacancies.

(1236) § **17**. It shall be lawful for any building and loan association now incorporated under the general laws of this Territory and accepting the provisions of this act, or that may hereafter be incorporated, in addition to dues and interest to charge and receive the premiums or bonus bid by a stockholder for preference or priority of right to a loan in periodical installments, and such premium or bonus so paid in installments shall not be deemed usurious but shall be taken to be a payment as it fall due, in contradiction to a premium charged and paid in advance, in so far as said premium or bonus so charged and paid, in addition to dues and interest, shall be in excess of two dollars for each periodical payment, the same shall be lawful, any law, usage or custom to the contrary notwithstanding: *Provided*, That the certificate of incorporation of each association hereafter to be incorporated, and the certificate provided in section 1238, for those heretofore incorporated, shall set forth whether the premium or bonus bid for the prior rights to a loan shall be deducted therefrom in advance or paid in periodical installments.

Lawful to receive premiums.

(1237) § **18**. The by-laws of such association may provide for the voluntary withdrawal and cancellation at or before maturity of shares of stock not borrowed on: *Provided*, That such withdrawal and cancellation shall be *pro rata* among the shares of the same series of stock: *And provided further*, That not less than twelve per cent per annum shall be credited and allowed to each share so withdrawn and cancelled.

Withdrawal of stock.

(1238) § **19**. Any building and loan association heretofore or hereafter incorporated under the provisions of any law of the Territory shall be entitled to all the privileges and immunities, franchises and powers, conferred by this article upon filing with the Secretary of the Territory a certificate to be by him recorded as provided in section 1230 of their acceptance of the same, in writing under the duly authenticated seal of the said association, which certificate shall also prescribe their mode or plan of charging premiums or bonus for priority of loan as set forth in section 1236, and upon such acceptance and approval thereof by the Secretary of the Territory he shall issue his certificate to said corporation reciting the same,

When entitled to privileges of this act.

SECTION.
1. Entitled to certain privileges.
2. Re-incorporation unnecessary, when.
3. Previous acts ratified.

Entitled to certain privileges, when.

(1239) § **1.** Any company heretofore incorporated under any general law of this Territory, or by virtue of any special charter heretofore granted by the Legislature thereof, incorporating any company for the purpose of doing a banking, loan or other business provided for in chapter 18; or any building or loan association heretofore incorporated, and having accepted the provisions of article 16 of said chapter, as therein provided, shall be entitled to all the privileges, immunities, franchises and powers mentioned in said chapter 18, and the privileges, immunities aud powers recited in said article 16, upon filing with the Secretary of the Territory a certificate to be by him recorded, which certificate shall be under the duly authenticated seal of such corporation, and shall set forth such corporation's acceptance of the provisions of section 957.

Re-incorporation unnecessary, when.

(1240) § **2.** Upon the acceptance and approval of said certificate, by the Secretary of the Territory, such corporation shall thenceforth be entitled to all the privileges, immunities, franchises and powers conferred by section 957, in the same manner as if incorporated under the provisions thereof.

Previous acts ratified.

(1241) § **3.** And is further provided, that all the acts of such incorporations previously done under and by virtue of their then existing charters shall be and are hereby ratified and made legal.

ARTICLE 18.—EXISTING CORPORATIONS ELECTING TO CONTINUE UNDER THIS CHAPTER.

SECTION.
1. Proceedings for continuance of existing corporations.

Proceedings when existing corporations elect to continue.

(1242) § **1.** Any corporation existing at the passage of this act, formed under the laws of this Territory, may elect to continue its existence under the provisions of this chapter applicable thereto, and it may, at any time thereafter, make such choice or election, at any meeting of the stockholders or members, or at any meeting called by the directors or trustees expressly for considering the subject, if voted for by stockholders representing a majority of the capital stock, or by a majority of its members; or it may be made by the directors or trustees upon the written consent of that number of such stockholders or members. A certificate of the action of the directors or trustees, signed by them and their secretary, with the seal of the corporation, when the election is made upon such written consent, or, a certificate of the proceedings of the meeting of the stockholders or members, when such election is so made, signed by the chairman and secretary of the meeting, and a majority of the directors and trustees, and must be filed in the office of the Secretary of the Territory, and there-

after the corporation shall continue its existence under the provisions of this chapter which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

ARTICLE 19.—UNINCORPORATED ASSOCIATIONS.

SECTION.
1. Held strictly to the law.

Certain associations held strictly to the law.

(1243) § **1.** Any person or persons, or association of persons now engaged in or that may hereafter engage in the construction of any street railway, toll road, ditch for conveying water, or any other works or improvements specified in chapter 18 shall be required to comply strictly with all the provisions of said chapter in the same manner as therein provided for incorporated companies, so far as the same can be done; and upon failure of any such person or persons, or association of persons, to comply as aforesaid, the same shall work a forfeiture of any and all rights he or they may have acquired in accordance with the law.

ARTICLE 20.—DUTIES OF FOREIGN CORPORATIONS.

SECTION.
1. Foreign corporations must file charter.
2. Record.
3. Resident agent to accept service.

Foreign corporations must file charter.

(1244) § **1.** No corporation created or organized under the laws of any other state or territory shall transact any business within this Territory, or acquire, hold, and dispose of property, real, personal or mixed, within this Territory, until such corporation shall have filed in the office of the Secretary of the Territory, a duly authenticated copy of its charter or articles of incorporation, and shall have complied with the provisions of this article: *Provided*, That the provisions of this act shall not apply to corporations or associations created for religious or charitable purposes solely.

Record.

(1245) § **2.** Such charter or articles of incorporation shall be recorded in a book to be kept by the Secretary of this Territory for that purpose.

Resident agent to accept service.

(1246) § **3.** Such corporation shall appoint an agent, who shall reside at some accessible point in this Territory, in the county where the principal business of said corporation shall be carried on, duly authorized to accept service of process, and upon whom service of process may be made in any action in whlch said corporation may be a party; and service upon such agent shall be taken and held as due service upon such corporation. A duly authenticated copy of the appointment or commission of such agent shall be filed and recorded in the office of the Secretary of the Territory and register of deeds of the county where said agent resides, and a certified copy thereof by the Secretary or register of deeds shall be conclusive evidence of the appointment and authority of such agent.

CHAPTER XIX.—COURT—PROBATE.

ARTICLE.
1. Jurisdiction of probate court.
2. Probate of wills.
3. Executors and administrators; their letters, bonds, removals and suspensions.
4. Inventory and collection of effects of decedent.
5. Of the homestead and of the allotments of personal property.
6. Of claims against the estate.
7. Of sales and conveyances of property of decedents.
8. Of the powers and duties of executors and and administrators, and of the management of estate.
9. Of the conveyance of real property by executors and administrators in certain cases.
10. Of accounts rendered by executors, administrators and of the payment of debts.
11. Of the partition, distribution and final settlement of estates.
12. Orders, decrees, process, minutes, records and trial.
13 Guardian and ward.
14. Duties of probate judge.
15. Transfers of actions from county court to the district court.
16. Extension of probate judge's jurisdiction and prescribing procedure.

ARTICLE 1.—JURISDICTION.

SECTION.
1. Jurisdiction and powers.
2. Construction and effect of proceedings.
3. Service of process.
4. Judge disqualified, when.
5. Jurisdiction resumed.
6. Powers of judge.
7. Venue of probate acts.
8. When in more than one county; venue in either.
9. Jurisdiction is territorial.

Jurisdiction and powers of probate court.

(1247) § 1. The probate court has jurisdiction, and the judge thereof power, which must be exercised in the cases, and in the manner prescribed by statute:

First. To open and receive proof of last wills and testaments, and to admit them to proof, and to revoke the probate thereof, and to allow and record foreign wills.

Second, To grant letters testamentary, of administration and of guardianship, and to revoke the same.

Third. To appoint appraisers of estates of deceased persons.

Fourth. To compel executors, administrators and guardians to render accounts.

Fifth. To order the sale of property of estates, or belonging to minors.

Sixth. To order the payment of debts due from estates.

Seventh. To order and regulate all distributions of property or estates of deceased persons.

Eighth. To compel the attendance of witnesses and the production of title deeds, papers and other property of an estate, or of a minor.

Ninth. To exercise all the powers conferred by this article or by other law.

Tenth. To make such orders as may be necessary to the exercise of the powers conferred upon it.

Eleventh. To appoint and remove guardians for infants, and for persons insane or otherwise incompetent; to compel payment and delivery by them of money or property belonging to their wards, to control their conduct and settle their accounts.

Construction and effect of proceedings.

(1248) § **2.** The proceedings of this court are construed in the same manner, and with like intendments, as the proceedings of courts of general jurisdiction, and to its records, orders, judgments and decrees, there are accorded like force, effect and legal presumptions as to the records, orders, judgements and decrees of district courts.

Service of process.

(1249) § **3.** All process issued by the probate court shall be served in the same manner. and by the persons and officers as provided for the service of process of the district court, with the same fees.

Judge disqualified, when.

(1250) § **4.** When the judge of the probate court is a party to any proceeding therein, or connected by blood or affinity to any person so interested nearer than the fourth degree, or is personally interested in the conduct or event of any probate matter or proceeding, or when he is named as a legatee or devisee, or executor, or trustee in a will, or is a witness thereto, he shall be disqualified to act therein, and it shall be disposed of as follows:

First. He shall call the county clerk, who shall in such cases be substituted for and have power to act in placed of the judge of the probate court; and such acts of the county clerk while acting as judge of the probate court, shall be binding upon all parties interested therein, and the record shall set forth the occasion of his substitution, and show by his official signature the proceedings had, and the acts done by and before him.

Second. Whenever in such cases the probate of any will, the appointment of any executor, administrator or guardian, or any other probate act, is resisted, and any issue of law or fact is joined, the said issue, and all the papers and records relating thereto, shall be sent to the district court for the county or judicial subdivision which shall have full jurisdiction of the same, and it shall be tried and determined and the necessary judgment and order made by that court, and all the proceedings had and the judgments and orders made therein shall be entered by the clerk of said court in the record of the probate court, and returned together with all the papers, to the probate court; and the clerk of the district court is entitled to charge and receive the same fees as for like services in the district court, and the county clerk the same fees as the judge of the probate court in like cases.

Jurisdiction resumed when another judge is qualified.

(1251) § **5.** Under the substitution or transfer of jurisdiction provided in the last section, the law and the rights of parties shall in all other respects be and remain the same; and if, before the issues so transferred are decided, or the administration of such estate is closed, another person be elected or appointed and qualified as judge of the probate court, who is not disqualified to to act in the settlement of the estate, he must resume full jurisdiction of the case, and upon notice to that effect from the judge of the probate court, the clerk of the district court must return all papers and records to the probate court.

Powers of judge.

(1252) § **6.** A judge of the probate court, as contradistinguished from the probate court, may exercise out of court all the powers expressly conferred upon him as a judge.

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Venue of probate acts.

(1253) § **7.** Wills must be proved, and letters testamentary or of administration granted.

First. In the county of which the decedent was a resident at the time of his death, in whatever place he may have died.

Second. In the county in which the decedent may have died, leaving estate therein, he not being a resident of the Territory.

Third. In the county in which any part of the estate may be, the decedent having died out of the Territory, and not resident thereof at the time of his death.

Fourth. In the county in which any part of the estate may be, the decedent not being a resident of the Territory, but dying within it, and not leaving estate in the county in which he died.

Fifth. In all other cases, in the county where application for letters is first made.

When in more than one county, venue in either.

(1254) § **8.** When the estate of the decedent is in more than one county, he having died out of the Territory, and not having been a resident thereof at the time of of his death, or being such non-resident and dying within the Territory, and not leaving estate in the county where he died, the probate court of that county in which application is first made for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate.

Jurisdiction territorial.

(1255) § **9.** The probate court of the county in which application is first made for letters testamentary or of administration in any of the cases above mentioned, shall have jurisdiction co-extensive with the Territory in the settlement of the estate of the decedent and the sale and distribution of his real estate and excludes the jurisdiction of the probate court of every other county.

Petition, Notice and Proof.

SECTION.
1. Custodian of will to deliver to judge.
2. Who may petition for proof of will.
3. Requisites of the petition.
4. Presumed renunciation of executorship.
5. Compulsory production of the will.
6. Hearing of petition; notice to be given.
7. Heirs given notice by mail.
8. Powers of judge at chambers.
9. Proof of notice; appearaece is waiver of notice.
10. Contesting a will.
11. When there is no contest.
12. Olographic will, how proved.

Contesting Probate of Wills.

SECTION.
13. Proceeding where probate of will is contested.
14. Findings and conclusions of the court.
15 Witnesses on trial of the contest.
16. Testimony of each witness must be preserved.
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Probate of Foreign Wills.

SECTION.
19. Foreign will probated; where.
20. Petitions and time of hearing.
21. Requisites of proof.

Contesting Will after Probate.

SECTION.
22. Causes for contesting will after probate.
23. Citation issued to executors.
24. Another will offered.
25. Hearing of contest.
26. Revocation of will.
27. Costs of contests.
28. Probate, when conclusive.

Probate of Lost or Destroyed Will.

SECTION.
29. Proceedings in case of lost will.
30. Special requisites of proof.
31. Statement of lost will.
32. Restraint of former administrators.

Probate of Nuncupative Wills.

SECTION.
33. Nuncupative wills, how proved.
34. Limitation as to time and facts alleged.
35. Double time allowed for revocation.

(1256) § **1**. Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the probate court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby. Custodian of will to deliver same to probate court.

(1257) § **2**. Any executor, devisee or legatee named in any will, or any other person interested in the estate, may at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the same be in writing, in Who may petition court for proof of will

Chap. 19. his possession or not, or is lost or destroyed, or beyond the jurisdiction of the Territory, or a nuncupative will.

Requisites of the petition.

(1258) § **3.** A petition for the probate of a will must show:

First. The jurisdictional facts.

Second. Whether the person named as executor consents to act, or renounces his right to the letters testamentary.

Third. The names, ages and residence of the heirs and devisees of the decedent so far as known to the petitioner.

Fourth. The probable value and character of the property of the estate.

Fifth. The name of the person for whom letters testimentary are prayed.

No defect of form, or in the statement of jurisdictional facts actually existing, shall make void the probate of a will.

Presumed renunciation of executorship.

(1259] § **4.** If the person named in a will as executor, for thirty days after he has knowledge of the death of the testator, and that he is named as executor, fails to petition the proper court for the probate of the will, and that letters testamentary be issued to him, he may be held to have renounced his right to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

Compulsory production of the will.

(1260) § **5.** If it be alleged in any petition that any will is in the possession of a third person and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring him to produce it in the court at the time named in the order, If he has possession of the will and neglects or refuses to produce it in obedience to the order, he may by warrant of the court be committed to the jail of the county, and kept in close confinement until he produces it.

Hearing of the petition; notice to be given.

(1261) § **6.** When the petition is filed and the will produced, the judge of the probate court must fix a day for hearing the petition, not less than ten or more than thirty days from the production of the will. Notice of a hearing shall be given by the judge by publishing the same in a newspaper of the county; if there is none, then by three written or printed notices posted at three of the most public places in the county. If the notice be published in a weekly newspaper, it must appear therein on at least three different days of publication, and if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and last days being included. If the notice is by posting it must be given at least ten days before the hearing.

Heirs given notice by mail.

(1262) § **7.** Written or printed copies of the notice of the time appointed for the probate of the will, must be addressed to the heirs of the testator resident in the Territory, at their places of residence, if known to the petitioner, and deposited in the post-office, with the postage thereon prepaid by the petitioner, at least ten days before the hearing; the notice must be issued by the judge over the seal of the court. Proof of the mailing of the notice must be made at the hearing; the same notice and proof of service

thereof on the person named as executor must be made if he be not the petitioner; also on any person named as co-executor, not petitioning, if their place of residence be known.

Powers of judge at chambers

(1263) § **8.** The judge of the probate court may, out of term time, or at chambers, receive petitions for the probate of wills, and make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses, and may appoint special terms of his court for hearing the petitions, trials of issues, and admitting wills to probate.

Proof of notice appearance is waiver of notice.

(1264) § **9.** At the time appointed for the hearing, or at tte time to which the hearing may have been postponed, the court unless the parties appear, must require proof that the notice has been given, which being made the court must hear testimony in proof of the will. If such notice is not proved to have been given, or if from any other cause it is necessary, the hearing may be postponed to a day certain, and notice to absentees given thereof, as original notice is required to be given. The appearance in court of parties interested is a waiver of notice.

Contesting a will.

(1265) § **10.** Any person interested may appear and contest the will. Devisees, legatees or heirs of an estate may contest the will through their guardians or attorneys appointed by themselves, or by the court for that purpose; but a contest made by an attorney appointed by the court does not bar a contest, after probate, by the party so represented, if commenced within one year after such probate; nor does the non-appointment of an attorney by the court of itself invalidate the probate of a will.

When there is no contest.

(1266) § **11.** If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

Olopraphic will, how proved.

(1267) § **12.** An olographic will may be proved in the same manner that other private writings are proved.

Proceedings when probate of will is contested.

(1268) § **13.** If any one appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may demur thereto upon any of the grounds of demurrer allowed by law in civil actions. If the demurrer be sustained, the court must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the demurrer is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing or otherwise obviating or avoiding the objections. Any issues of fact thus raised, involving;

First. The competency of the decedent to make a last will and testament;

Second. The freedom of the decedent at the time of the execution of the will from duress, menace, fraud, or undue influence.

Third. The due execution and attestation of the will by the decedent or subscribing witnesses; or,

Fourth. Any other questions substantially affecting the validity of the will must be tried and determined by the court.

On the trial the contestant is plaintiff, and the petitioner is defendant.

Findings and conclusions of the court.

(1269) § **14.** The court, after hearing the case; must give in writing the findings of fact and conclusions of law upon the issues submitted, and upon these the court must render judgment, either admitting the will to probate or rejecting it. In either case, the proofs of the subscribing witnesses must be reduced to writing. If the will be admitted to probate, the judgment, will, and proofs must be recorded.

nesses on trial of the contest

(1270) § **15.** If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined; and the death, absence or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the county, and are not present at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

Testimony of each witness must be preserved

(1271) § **16.** The testimony of each witness, reduced to writing and signed by him, shall be taken, kept and filed by the judge, and shall be good evidence in any subsequent contests or trials concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead, or has permanently removed from this Territory.

Certificate of probate

(1272) § **17.** If the court be satisfied upon the proof taken that the will was duly executed, and that the testator was, at the time of the execution thereof, of sound and disposing mind, and not acting under duress, menace, fraud or undue influence, a certificate of the proof and the facts so found, signed by the judge and attested by the seal of the court, must be attached to the will.

Record of will and certificate.

(1273) § **18.** The will and the certificate of the proof thereof, together with all the evidence taken, must be filed by the judge, and recorded by him in a book to be provided, at the charge of the county, for that purpose.

Foreign wills probated where estate is claimed.

(1274) § **19.** Every will duly proved and allowed in any other of the territories, or in any of the United States or the District of Columbia, or in any foreign country or state, may be allowed and recorded in the probate court of any county in which the testator shall have left any estate, or any estate for which claim is made.

Petition filed and time appointed for hearing.

(1275) § **20.** When a copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court or judge must appoint a time for the hearing, notice whereof must be given as provided for an original petition for the probate of a will.

Requisites of proof

(1276) § **21.** If, on the hearing, it appears upon the face of the record that the will has been proved, allowed and admitted to probate in any other of the territories, or any state of the United States, the District of Columbia, or in any foreign country or state, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the

time domiciled, or in conformity with the laws of this Territory, it must be admitted to probate, be certified in like manner according to the facts, and recorded, and have the same force and effect as a will first admitted to probate in this Territory, and letters testamentary or of administration issued thereon.

Causes for contesting will after probate.

(1277) § **22.** When a will has been admitted to probate, any person interested therein may at any time within one year after such probate, contest the same or the validity of the will. For that purpose he must file in the court in which the will was proved a sworn petition in writing containing his allegations, that evidence discovered since the probate of the will, the material facts of which must be set forth, shows:

First. That a will of a later date than the one proved by the decedent, revoking or changing the former will, has been discovered, and is offered; or,

Second. That some jurisdictional fact was wanting in the former probate; or

Third. That the testator was not competent, free from duress, menace, fraud, or undue influence when the will allowed was made; or,

Fourth. That the former will was not duly executed and attested.

Citation issued to executors.

(1278) § **23.** Upon filing the petition, a citation must be issued to the executors of the will, or to the administrators with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the Territory, so far as known to the petitioner, or to their guardian, if any of them are minors, or their personal representatives, if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

Another will offered.

(1279) § **24.** If another will be offered by the petition, it must show all that is required in the original case of a petition for the probate of a will, and like notices must be served in the same manner and upon all the parties, as required before the hearing of proof of any will originally: *Provided,* That such notices need not be served on any persons upons whom the citation required in the preceding section is to be served.

Hearing of contest.

(1280) § **25.** At the time appointed for showing cause, or at any time to which the hearing is postponed, personal service of the citations having been made upon the persons named therein, and the required publication, posting and service of the notices having been made, and all duly proved, the court must proceed to try the issues joined in the same manner as in an original contest of a will. If upon hearing the proofs of the parties the court shall decide that the will is, for any of the reasons alleged, invalid, or that it is not proved to be the last will of the testator, the probate must be annulled and revoked; and if the court shall decide that the new will is valid, it may admit the same to probate in the same manner as originally upon the probate of a contested will.

Revocation of will.

(1281) § **26.** Upon the revocation being made, the powers of

the executor or administrator with the will annexed, must cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

Costs of contest.

(1282) § **27.** The fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate be confirmed. If the probate be annulled and revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

Probate conclusive.

(1283) § **28.** If no person, within one year after the probate of a will, contests the same or the validity thereof, the probate of the will is conclusive, saving to infants and persons of unsound mind, a like period of one year after their respective disabilities are removed.

Proceedings in case of lost will.

(1284) § **29.** Whenever any will is lost or destroyed, the probate court must take proof of the execution and validity thereof, and establish the same, notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases, All the testimony given must be reduced to writing, signed by the witnesses, filed and preserved.

Special requisites of proof.

(1285) § **30.** No will shall be proved as a lost or destroyed will, unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently destroyed in the life-time of the testator, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.

Statement of lost will.

(1286) § **31.** When a lost will is established, the provisions thereof must be distinctly stated and certified by the judge of the probate court, under his hand and the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration with the will annexed, must be issued thereon in the same manner as upon wills produced and duly proved; the testimony must be reduced to writing; signed, certified and file as in other cases, and shall have the same effect as evidence as provided in sections from 1268 to 1273 inclusive.

Restraint of former administration.

(1287) § **32.** If before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

Nuncupative wills, how proved

(1288) § **33.** Nuncupative wills may at any time, within sfx months after the testamentary words are spoken by the decedent, be admitted to probate on petition and notice as provided for the probate of wills executed in writing. The petition, in addition to the jurisdictional facts, must allege that the testamentary words, or the substance thereof, were reduced to writing within thirty days after they were spoken, which writing must accompany the petition.

Limitation as to time and facts alleged.

(1289) § **34.** The probate court must not receive or entertain a petition for the probate of a nuncupative will until the lapse of

fourteen days from the death of the testator, nor must such petition be at any time acted on, unless the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife, if any, and all other persons resident in the Territory or county, interested in the estate, are notified, as provided in sections from 1256 to 1267, inclusive.

Double time allowed for revocation.

(1290) § **35.** Contests of the probate of nuncupative wills and appointments of executors and administrators of the estate devised thereby must be had, conducted and made as hereinbefore provided in cases of the probate of written wills; *Provided*, That double the period allowed for the petition of revocation of the probate of a written will shall be allowed in which to petition for the revocation and annulling of the nuncupative will.

ARTICLE 3.—EXECUTORS AND ADMINISTRATORS, THEIR LETTERS, BONDS, REMOVALS AND SUSPENSIONS.

Letters Testamentary and of Administration with the Will Annexed, How and to Whom Issued.

SECTION.
1. Letters to the executors by the will.
2. Incompetency defined.
3. Objections to executors.
4. Marriage of woman annuls executorship.
5. Death of one executor.
6. Removal of disqualification.
7. Appointment and acts of part of executors.
8. Administrators have same power as executors.

Form of Letters.

SECTION.
9. Form of letters testamentary.
10. Letters of admistration with will.
11. Letters of administration.

Letters of Administration—To Whom and the Order in Which They are Granted.

SECTION.
12. Who are entitled to letters of administration.
13. Preferences.
14. Persons equally entitled.
15. Letters to guardian of minor.
16. Incompetency defined.
17. Married woman cannot be administratrix.

Petition and Contest for Letters and Action Thereon.

SECTION.
18. Requisites of petition for administration.
19. When letters may be granted.
20. Notice of hearing.
21. Who may contest application.
22. earing of the petition.
23. Proof of the notice.
24. Waiver of right to letters.
25. Proof of intestacy; value and character of property.
26. Administration to third persons on request.

Revocation of Letters and Proceedings Therefor.

SECTION.
27. When letters may be revoked.
28. Additional notice must be given.
29. Hearing on application for revocation.
30. Assertion of prior right.

Oaths and Bonds of Executors and Administrators.

SECTION.
31. Executor and administrator must take oath.
32. Non-resident must appoint agent.
33. Executors and administrators must give bond.
34. Additional bond must be given before real estate is sold.
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45. Suspension of powers; removal.
46. Judge to make inquiry into sufficiency of bond.
47. Release of surety on application.
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50. Hearings out of term time.

Special Administrators, their Powers and Duties.

SECTION.
51. Special administrators appointed, when.
52. How appointed.
53. Preference given.
54. Bond of special administrator.
55. Duties of special administrator.
56. Suspension by regular appointee.
57. Special administrator must render account.

Wills found after Letters of Administration Granted, and Miscellaneous Provisions.

SECTION.
58. Letters of administration revoked.
59. Succession to rights and powers.
60. Surviving executor or administrator.
61. When all become incompetent.
62. Resignation of executor or administrator.
63. Previous acts valid.
64. Proof of appointment.

Removals and Suspensions in Certain Cases.

SECTION.
65. Embezzlement by executor or administrator; annual report.
66. Citation on suspension.
67. Hearing of the issues.
68. Attendance of executor or administrator compelled.
69. Notice of proceedings by publication.

Letters to the executors by the will.

(1291) § **1.** The court admitting the will to probate after the same is proved and allowed, must issue letters thereon to the persons named therein as executors, who are competent to discharge the trust, who must appear and qualify unless objections be made as provided in the second section following.

Incompetency defined.

(1292) § **2.** No person is competent to serve as executor who at the time the will is admitted to probate, is:

First. Under the age of majority.

Second. Convicted of an infamous crime.

Third. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkennes, improvidence, or want of understanding and integrity.

If the sole executor or all the executors are incompetent, or renounce or fail to apply for letters, or to appear and qualify, letters of administration with the will annexed must be issued,

Objections to executors.

(1293) § **3.** Any person interested in a will may file objections in writing, to granting letters testamentary to the persons named as executors, or any of them; and the objections must be heard and determined by the court. A petition may at the same time, be filed for letters of administration, with will annexed.

Marriage of executrix extinguishes her authority.

(1294) § **4.** When an unmarried woman, appointed executrix, marries, her authority is extinguished. When a married woman is named as executrix, she may be appointed and serve in every respect as a *femme sole.*

Death of an executor.

(1295) § **5.** No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator, left unadministered, must be issued.

Removal of the disqualification.

(1296) § **6.** Where a person absent from the Territory, or a minor, is named executor, and there is another executor who accepts the trust and qualifies, the latter may have letters testamentary and administer the estate until the return of the absentee, or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration with the will annexed, must be granted; but the court may, in its discretion, revoke them on the return of the absent executor, or the arrival of the minor at the age of majority.

Appointment or acts of part of executors.

(1297) § **7.** When all the executors named are not appointed by the court, those appointed have the same authority to perform all the acts and discharge the trust required by the will, as effectually for every purpose as if all were appointed and should act together; when there are two executors or administrators, the act of one alone shall be effectual, if the other is absent from the Territory, or laboring under any legal disability from serving, or if he has given his co-executor or co-administrator authority, in writing, to act for both; and when there are more than two executors or administrators, the act of a majority of them is valid.

Administrators have same power as executor.

(1298) § **8.** Administrators with the will annexed have the same authority over the estates which executors named in the will would have, and their acts are effectual for all purposes. Their letters must be signed by the judge of the probate court, and bear the seal thereof.

Form of letters testamentary.

(1299) § **9.** Letters testamentary must be substantially in the following form:

TERRITORY OF OKLAHOMA, }
COUNTY OF..... }

The last will of A B, deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of....., C D, who is named therein, is hereby appointed executor.

Witness, G H, judge of the probate court of the county of....., with the seal of the court affixed, the.....day of.....A. D., 18..

[Seal and the official signature of the judge.]

Letters of administration with the will.

(1300) § **10.** Letters of administration with will annexed must be substantially in the following form:

TERRITORY OF OKLAHOMA, }
COUNTY OF..... }

The last will of A B, deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of....., and there being no executor named in the will (or, as the dase may be), C D is hereby appointed administrator, with the will annexed.

Witness, G H, judge of the probate court of the county of....., with the seal of the court affixed, the....day of.....A. D., 18..

[Seal and the official signature of the judge.]

Letters of administration.

(1301) § **11**. Letters of administration must be signed by the judge, under the seal of the court, and substantially in the following form:

TERRITORY OF OKLAHOMA, }
COUNTY OF..... }

C D is hereby appointed administrator of the estate of A B, deceased.

Witness, G H, judge of the probate court of the county of..... , with the seal thereof affixed, the... ..day of..... , A. D., 18..

[Seal and official signature of the judge.]

Who are entitled to letters of administration.

(1302) § **12**. Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, and they are respectfully entitled thereto in the following order:

First. The surviving husband or wife, or some competent person whom he or she may request to have appointed.

Second. The children.

Third. The father or mother.

Fourth. The brothers.

Fifth. The sisters.

Sixth. The grandchildren.

Seventh. The next of kin entitled to share in the distribution of the estate.

Eighth. The creditors.

Ninth. Any person legally competent.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate.

Preferences

(1303) § **13**. Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole blood to those of the half blood.

Equally entitled

(1304) § **14**. When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters, the court may, in its discretion, at the request of another creditor, grant letters to any other person legally competent.

Letters to guardian of minor.

(1305) § **15**. If any person entitled to administration is a minor, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court.

Incompetency defined.

(1306) § **16**. No person is competent to serve as administrator or administratrix, who, when appointed, is:

First. Under the age of majority.

Second. Convicted of an infamous crime.

Third. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkeness, improvidence or want of understanding or integrity.

Married women cannot be administratrix.

(1307) § **17**. A married woman must not be appointed ad

ministratrix. When an unmarried woman, appointed administratrix, marries, her authority is extinguished.

Requisites of petition for administration.

(1308) § **18.** Petition for letters of administration must be in writing, signed by the applicant or his counsel, and filed with the judge of the court stating the facts essential to give the court jurisdiction of the case, and when known to the applicant, he must state the names, ages and residence of the heirs of the decedent, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and are afterwards proved in the course of administration, the decree or order of administration and subsequent proceedings are not void on account of such want of jurisdictional averments.

When letters may be granted.

(1309) § **19.** Letters of administration may be granted at a regular term of the court or at a special term appointed by the judge for the hearing of the application.

Notice of hearing.

(1310) § **20.** When a petition praying for letters of administration is filed, the judge must give notice thereof containing the name of the decedent, the name of the applicant for letters, and the day and term of the court at which the application will be heard, which notice must be published by posting or printing in a newspaper, the same as required for notice of the probate of a will.

Who may contest the application.

(1311) § **21.** Any person interested may contest the petition by filing written opposition thereto on the ground of the incompetency of the applicant, or may assert his own rights to the administration and pray that letters be issued to himself. In the latter case the contestant must file a petition and give the notice required for an original petition, and the court must hear the two petitions together.

Hearing of the petition.

(1312) § **22.** On the hearing, it being first proved that notice has been gived as herein required, the court must hear the allegations and proofs of the parties, and order the issuing of letters of administration to the party best entitled thereto.

Proof of the notice.

(1313) § **23.** An entry in the minutes of the court, that the required proof was made and notice given, shall be conclusive evidence of the fact of such notice.

Waivers of right to letters.

(1314) § **24.** Letters of administration must be granted to any applicant, though it appears that there are other persons having better rights to the administration when such persons fail to appear and claim the issuing of letters to themselves.

Proof of intestacy and value and character of property.

(1315) § **25.** Before letters of administration are granted on the estate of any person who is represented to have died intestate, the fact of of his dying intestate must be proved by the testimony of the applicant or others; and the court may also examine any other person concerning the time, place and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left any will, and may compel any person to attend as a witness for that purpose.

Administration to third persons on request.

(1316) § **26.** Administration may be granted to one or more competent persons, although not entitled to the same, at the writ-

ten request of the person entitled, filed in the court. When the person entitled is a non-residents of the Territory, affidavits or depositions taken *ex-parte* before any officer authorized by the laws of this Territory to take acknowledgments and administer oaths out of this Territory,may be received as *prima facie* evidence of the identity of the party, if free from suspicion, and the fact is established to the satisfaction of the court.

When letters may be waived.

(1317) § **27**. When letters of administration have been granted to any person other than the surviving husband or wife, child, father, mother, brother, or sister of the intestate, any one of them may obtain the revocation of the letters, and be entitled to the administration, by presenting to the probate court a petition praying the revocation, and that letters of administration may be issued to him.

Additional notice given.

(1318) § **28**. When such petition is filed, the judge must in addition to the notice provided upon petition for letters, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

Hearing on application for revocation.

(1319) § **29**. At the time appointed, the citation having been duly served and returned, the court must proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he is competent, letters of administration must be granted to him, and the letters of the former administrator revoked.

Assertion of prior right.

(1320) § **30**. The surviving husband or wife, when letters of administration have been granted to a child, father, mother, brother or sister of the intestate, or any of such relatives when letters have been granted to any other of them, may assert his prior right, and obtain letters of administration, and have the letters before granted revoked in the manner prescribed in the three preceding sections.

Executor and administrator must take oath.

(1321) § **31**. Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath, before some officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator, which oath must be attached to the letters. All letters testamentary and of administration issued to, and all bonds executed by executors or administrators, with the affidavits and certificates thereon must be forthwith recorded by the judge in books to be kept by him in his office for that purpose.

Non-resident must appoint an agent upon whom service can be made

(1322) § **32**. Every executor, administrator or guardian appointed in, but residing out of the Territory, shall, before entering upon the duties of his trust, in writing, appoint an agent residing in the county where he is appointed, and shall by such writing stipulate and agree that the service of any legal process against him as such executor, administrator or guardian if made on said agent shall be of the same legal effect as if made on himself personally within the Territory. Such writing shall give the proper address of such agent and shall be filed in the office of the judge of the probate court where such appointment is made.

Executors and administrators must give bond.

(1323) § **33**. Every person to whom letters testimentary or of

administration are directed to issue, must, before receiving them, execute a bond to the Territory of Oklahoma, with two or more sufficient sureties, to be approved by the judge of the probate court. In form the bond must be joint and several, and the penalty must not be less than twice the value of the personal property and twice the probable value of the annual rents, profits and issues of the real property belonging to the estate, which values must be ascertained by the probate judge, by examining on oath the party applying, and any other persons.

Additional bonds must be given before real estate is sold.

(1324) § **34.** The judge must require an additional bond whenever the sale of any real estate belonging to an estate is ordered by him; but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given before receiving letters, or any bond given in place thereof is equal to twice the value of the personal property remaining in, or that will come into the possession of the executor or administrator, including the annual rents, profits, and issues of real estate belonging to the estate, and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

Condition of bond

(1325) § **35.** The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

Separate bonds.

(1326) § **36.** When two or more persons are appointed executors or administrators, the judge of the probate court must require and take a separate bond from each of them.

Successive recoveries on the bond.

(1327) § **37.** The bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

Justification and approval of bonds.

(1328) § **38.** In all cases were bonds are required to be given, under this title, the officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and householders or freeholders within the Territory, and are each worth the sum specified in the bond, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the bond exceeds one thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the bond, if the whole amount be equivalent to that of two sufficient sureties, and the affidavits thereof must be attached to, and filed and recorded with the bond. All such bonds must be approved by the judge of the probate court before being filed and recorded. Before the judge of the probate court approves any bond required under this title, and after its approval he may of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties or some one or more of them are not worth as much as they have justified to, issue a citation, requiring such sureties to appear before him, at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, issue a notice to the executor or

administrator, requiring his appearance on the return of the citation; and on its return he may examine the sureties and such witnesses as may be produced, touching the property of the sureties and its value; and if, upon such examination, he is satisfied that the bond is insufficient, he must require sufficient additional security.

Security insufficient, right of executor or administrator must cease.

(1329) § **39.** If sufficient security be not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, must be appointed to the administration.

Bonds waived by will.

(1330) § **40.** When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue and sales of real estate be made and confirmed without any bond, unless the court, for good cause, require one to be executed; but the executor may, at any time afterward, if it appears from any cause necessary or proper, be required to file a bond as in other cases.

Bond becoming insufficient.

(1331) § **41.** Any person interested in an estate may, by verified petition, represent to the judge of the probate court that the sureties of the executor or administrator thereof have become, or are becoming insolvent or that they have removed or are about to remove from this Territory, or that from any other cause the bond is insufficient, and ask that further security be required.

Same of citations

(1332) § **42.** If the judge is satisfied that the matter requires investigation, a citation must be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation must be served personally on the executor or administrator, at least five days before the return day. If he has absconded, or cannot be found, it may be served by leaving a copy of it at his last place of residence, or by such publication as the judge may order.

Hearing and order.

(1333) § **43.** On the return of the citation, or at such other time as the judge may appoint, he must proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond, in the usual form, within a reasonable time, not less than five days.

Revocation of letters for disobedience.

(1334) § **44.** If the executor or administrator neglects to comply with the order within the time prescribed, the judge must, by order, revoke his letters, and his authority must thereupon cease.

Suspenson of powers, removal

(1335) § **45.** When a petition is presented praying that an executor or administrator be required to give further security, or to give bond where, by the terms of the will no bond was originally required and it is alleged on oath that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined. It shall be the duty of the probate court to make an examination of all bonds filed by administrators, or guardian or

executors, at least once each year, and to make diligent inquiry as to the solvency of the sureties on such bond, and to ascertain if they are still residents within the Territory and all other matters which might effect the said bonds or the sureties thereon: And if not found to be fully solvent and safe the court shall demand further security, and if not given within a reasonable time, the administrator, executor or guardian shall be removed.

Judge must make inquiry into sufficiency of bond.

(1336) § **46**. When it comes to his knowledge that the bond of any executor or administrator is, from any cause, insufficient, the judge of the probate court, without any application, must cite him to appear and show cause why he should not give further security, and must proceed thereon as upon the application of any person interested.

Release of surety on application.

(1337) § **47**. When a surety ot any executor or administrator desires to be released from responsibility on account of future aets, he may make application by petition to the judge of the probate court for relief. The judge must issue a citation to the executor or administrator, to be served personally upon him requiring him to appear at a time and place to be therein specified, and give other security. If he has absconded, left or removed from the Territory, or cannot be found after due diligence and inquiry, service may be made as provided when the citation is to require further security.

Release allowed, when

(1338) § **48**. If new sureties be given to the satisfaction of the judge. he may thereupon make and enter an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default or misconduct of the executor or administrator.

Refusal to give new sureties

(1339) § **49**. If the executor or administrator neglects or refuses to give new sureties, to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, unless the surety making the application shall consent to a longer extension of time, the judge must, by order, revoke his letters.

Hearings out of term time.

(1340) § **50**. The applications authorized by the nine preceding sections of this article, may be heard and determined out of term time; and all orders made therein must be entered upon the minutes of the court.

Special administrators appointed, when.

(1341) § **51**. When there is delay in granting letters testamentary, or of administration, from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an administrator or executor dies, or is suspended or removed, the judge of the probate court must appoint a special administrator to collect and take charge of the estate of the decedent, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate.

How appointed.

(1342) § **52**. The appointment may be made out of term time, and without notice, and must be made by entry upon the minutes of the court specifying the powers to be exercised by the administrator. Upon such order being entered, and after the person

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appointed has given bond, the judge must issue letters of administration to such person, in conformity with the order in the minutes.

Preference.

(1343) § **53.** In making the appointment of a special administrator, the judge must give preference to the person entitled to letters testamentary or of administration, but no appeal must be allowed from the appointment.

Bond of special administrator.

(1344) § **54.** Before any letters issue to any special administrator, he must give bond, in such sum as the judge may direct, with sureties to the satisfaction of the judge, conditioned for the faithful performance of his duties; and he must take the usual oath and have the same endorsed on his letters.

Duties of special administrator.

(1345) § **55.** The special administrator must collect and preserve for the executor or administrator all the goods, chattles, debts and effects of the decedent, all incomes, rents, issues and profits, claims and demands, of the estate, must take the charge and management of, enter upon and preserve from damage, waste and injury, the real estate, and for such and all necessary purposes may commence and maintain or defend suits and other legal proceedings, as an administrator; he may sell such perishable property as the probate court may order to be sold, and exercise such other powers as are conferred upon him by his appointment, but in no case is he liable to an action by any creditor on a claim against the decedent.

Special administrator superseded by regular appointee.

(1346) § **56.** When letters testamentary or of administration on the estate of the decedent have been granted, the powers of the special administrator cease, and he must forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

Special administrator must render account.

(1347) § **57.** The special administrator must render an account, on oath of his proceedings, in like manner as other administrators are required to do.

Letters of administration revoked.

(1348) § **58.** If, after granting letters of administration on the ground of intestacy, a will of the decedent is duly proved and allowed by the court, the letters of administration must be revoked, and the power of the administrator ceases, and he must render an account of his administration within such time as the court shall direct.

Successions to the rights and possessions.

(1349) § **59.** In such case, the executor or the administrator with the will annexed, is entitled to demand, sue for, recover and collect all the rights, goods, chattels, debts and effects of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Summoning executor or administrator completes duties.

(1350) § **60.** In case any one of several executors or administrators, to whom letters are granted, dies, becomes lunatic, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust, or in case the letters testamentary or of administration are revoked or annulled, with respect to any one executor or administrator, the remaining executor or administrator

must proceed to complete the execution of the will or administration.

When all become incompetent, successor must be appointed.

(1351) § **61.** If all such executors or administrators die or become incapable, or the power and authority of all of them are revoked, the probate court must issue letters of administration, with the will annexed or otherwise, to the widow or next in kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed must give bond in the like penalty, with like sureties and conditions as hereinbefore required of administrators, and shall have the like power and authority.

Resignation of administrator or executor, liability.

(1352) § **62.** Any executor or administrator may, at any time, by writing, filed in the probate court, resign his appointment, having first settled his account and delivered up all the estate to the person whom the court shall appoint to receive the same. If, however, by reason of any delays in such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require it, the court may at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released or affected by such appointment or resignation.

Previous acts are void.

(1353) § **63.** All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, are as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

Proof of appointment.

(1354) § **64.** A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the judge, under his hand and the seal of his court, that such person has given bond and qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, shall have the same effect in evidence as the letters themselves.

Embezzlement by executor or administrator; annual report

(1355) § **65.** Whenever the judge of the probate court has reason to believe, from his own knowledge or from creditable information, that any executor or administrator has wasted, embezzled or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upou the estate, or is incompetent to act or has permanently removed from the Territory or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator until the matter is investigated. The judge of the probate court shall require each and every administrator, executor or guardian to make report at least once in each year, showing the condition of the estate, and of all property, notes, moneys, and

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other assets in his hands and the use that has been made thereof during the past year.

Citation on suspension.

(1356) § **66.** When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court is satisfied there exists cause for his removal, his letters must be revoked, and letters of administration granted anew as the case may require.

Hearing of the issues.

(1357) § **67.** At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed to which the executor or administrator may demur or answer, as hereinbefore fore provided, and the court must hear and determine the issues raised.

Attendance of executor or administrator may be compelled.

(1358) § **68.** In the proceedings authorized by the preceding three sections, for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and upon his refusal to do so, may commit him until he obey, or may revoke his letters, or both.

Notice of proceedings given by publication, when.

(1359) § **69.** If any executor, administrator or guardian has absconded or conceals himself or has removed or absented himself from the Territory, notice may be given him of the pendency of any proceedings in which he is interested in any court, by publication, in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

ARTICLE 4.—OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEDENTS.

SECTION.		SECTION.	
1.	Inventory of estate.	9.	Additional inventory.
2.	Appraisers to be appointed.	10.	Possession of property is in executor or administrator.
3.	Oaths of appraisers; their duties.	11.	Term of possession.
4	Inventory to contain account of moneys received.	12.	Embezzlement before letters granted.
5.	Executor's personal debt.	13.	Complaint in embezzlement.
6.	Bequest of executor.	14.	Commitment of person cited
7.	Return of inventory.	15.	Account for property by third persons.
8.	Refusal to return inventory.		

Inventory of estate

(1360) § **1.** Every executor or administrator must make and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the decedant, except the homestead, if any, which has come to his possession or knowledge.

Appraisers to be appointed.

(1361) § **2.** To make the appraisement, the judge must appoint three disinterested persons, any [two] of whom may act, who are entitled to receive a reasonable conpensation for their services, not to exceed two dollars per day, to be allowed by the court. The appraisers must, with the inventory, file a verified account of their services and disbursements. If any part of the estate is in any

other county, the same appraisers may proceed to view and appraise the same, or other appraisers in that county may be appointed to perform that duty, by the judge of the probate court of the county in which the letters were issued, as he may deem best, and the like report must be made in each case direct to the probate court of the county which issued the letters.

Oath of appraisers; their duties.

(1362) § **3.** Before proceeding to the execution of their duty, the appraisers must take and subscribe an oath, to be attached to the inventory, that they will truly, honestly and impartially appraise the property exhibited to them, according to the best of their knowledge and ability. They must then proceed to estimate and appraise the property; each article must be set down separately, with the value thereof in dollars and cents, in figures, opposite to the articles respectively; the inventory must contain all the estate of the decedent, real and personal, except the homestead, a statement of all debts, partnerships and other interests, bonds, mortgages, notes and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, with their dates and the sum which, in the judgment of the appraisers, may be collected on each debt, interest or security.

Inventory contain accounts of moneys received.

(1363) § **4.** The inventory must also contain an account of all moneys belonging to the decedent, which have come to the hands of the executor or administrator, and if none, the fact must be so stated in the inventory. If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned as in other cases.

Executor's personal debt.

(1364) § **5.** The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him, but the claim must be included in the inventory, and the executor is liable for the same, as for so much money in his hands, when the debt or demand becomes due.

Request to executor.

(1365) § **6.** The discharge or bequest in a will of any debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent, but is a specific bequest of the debt or demand. It must be included in the inventory, and, if necessary, applied in the payment of the debts. If not necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

Return of inventory.

(1366) § **7.** The inventory must be signed by the appraisers, and the executor or administrator must take and subscribe an oath, before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be indorsed upon or annexed to the inventory.

Refusal to return inventory.

(1367) § **8.** If an executor or administrator neglects or refuses to return the inventory within the time prescribed, or within such further time, not exceeding two months, which the judge shall, for a reasonable cause, allow, the court may, upon notice, revoke the

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letters testamentary or of administration, and the executor or administrator is liable on his bond for any injury to the estate, or any person interested therein, arising from such failure.

Additional inventory

(1368) § **9**. Whenever property not mentioned in an inventory that is made and filed, comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed in this article, and an inventory thereof to be returned within two months after the discovery; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

Possession of all property in executor or administrator.

(1369) § **10**. The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and profits of the real estate, except the realty and improvements thereon properly belonging to the homestead, and such personal property as is reserved by law to the widow and children of the decedent, or either of them, until the estate is settled or delivered over by order of the probate court to the heirs or devisees; and must keep in good tenantable repair all houses, buildings, and fixtures thereon, which are under his control. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate, or for the purpose of quieting title to the same, against any one except the executor or administrator.

Term of such possession.

(1370) § **11**. Unless it satisfactorily appears to the probate court that the rents, issues and profits of the real estate for a longer period are necessary to be received by the executor or administrator wherewith to pay the debts of the decedent, or that it will probably be necessary to sell the real estate for the payment of such debts, at the end of ten months from the first publication of the notice to creditors, the court must direct the executor or administrator to deliver possession of all the real estate to the heirs at law or devisees.

Embezzlement before letters of administration are granted.

(1371) § **12**. If any person before the granting of letters testamentary or of administration, embezzles or alienates any of the moneys, goods, chattels or effects of a decedent, he is chargeable therewith, and liable to an action by the executor or administrator of the estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Complaint on embezzlement.

(1372) § **13**. If any executor, administrator, or other person interested in the estate of a decedent, complains to the probate court, on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods or chattels of the decedent, or has in his possession or knowledge, any deeds, conveyances, bonds, contracts, or other writings which contain evidences of, or tend to disclose the right, title, interest or claim of the decedent to any real or personal estate, or any claim or demand, or any lost will, the judge may cite such person to appear before the probate court, and may examine him, on oath, upon the matter of such complaint, if he can be found in the Territory. But if cited from another county, and he appears and is found innocent, his necessary expenses must be allowed him out of the estate.

(1373) § **14.** If the person so cited refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matters or the complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court or is discharged according to law. If, upon such examination, it appears that he has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods or chattels of the decedent, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts or other writings, tending to disclose the right, title, interest or claim of the decedent to any real or personal estate, claim or demand, or any lost will of the decedent, the probate court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the county jail, there to remain until the order is complied with, or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the probate court. The order for such disclosure made upon such examination, is *prima facie* evidence of the right of such administrator to such property in any action brought for the recovery thereof; and any judgment recovered therein must befor double the value of the property as assessed by the district court or jury ; or for return of the property, and damages in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

Commitment of person cited.

(1374) § **15.** The probate judge, upon the complaint, on oath, of any executor or administrator, may cite any person who has been entrusted with any part of the estate of the decedent, to appear before such court and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other property or papers belonging to the estate which have come to his possession in trust for the executor or administrator, and of proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

Account for property by third persons.

ARTICLE 5.—OF THE HOMESTEAD, AND OF THE ALLOTMENT OF PERSONAL PROPERTY.

SECTION.
1. Property delivered to the family at once.
2 Additional allotment to widow and children.
3 Selection of the homestead.
4 Homestead exempt from debt or liability.
5. Allowance for the family.
6. Allowance is a perferred claim.
7. Who receives the property set apart.
8. Summary administration, when.
9. Widow's separate property.

(1375) § **1.** Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law; and upon the death of both husband and wife the children may continue to possess and occupy the whole homestead until the youngest child becomes of age. And in addition thereto the following personal

Property to be delivered to the family at once.

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property must be immediately delivered by the executor or administrator to such surviving wife or husband, and child or children, and is not to be deemed assets, namely:

First. All family pictures.

Second. A pew or other sitting in any house of worship.

Third. A lot or lots in any burial ground.

Fourth. The family bible and all school books used by the family, and all other books used as a part of the family library not exceeding in value one hundred dollars.

Fifth. All wearing apparel and clothing of the decedent and his family.

Sixth. The provisions for the family necessary for one year's supply, either provided or growing, or both; and fuel necessary for one year.

Seventh. All household and kitchen furniture, including stoves, beds, bedsteads and bedding, not exceeding one hundred and fifty dollars in value.

The executor or administrator must make a separate and distinct inventory of all the personal property specified in this section, by articles, and opposite each article give the appraised value of the same, in dollars and cents, as given in the general inventory of the appraisers appointed by the court and return the same to the probate court, and no such property shall be liable for any prior debts or claims whatever.

Additional allotment to widow and children.

(1376) § **2.** In addition to the property mentioned in the preceding section, there shall also be allowed and set apart to the surviving wife or husband, or the minor child or children of the decedent, all such personal property or money as is exempt by law from levy and sale on execution or other final process from any court, to be, with the homestead, possessed and used by them; and the executor or administrator must make and return a separate and distinct inventory thereof in the same manner as required for the property mentioned in the preceding section, and no such property shall be liable for any prior debts or claims against the decedent, except when there are no assets thereunto available for the payment of the necessary expenses of his last illness, funeral charges and expenses of administration.

Selection of the homestead.

(1377) § **3.** If no homestead has been selected, marked out, platted and recorded, as provided by the homestead law, the judge of the probate court must cause the same to be done according to the provisions of said law.

Homestead exempt from debt or liability.

(1378) § **4.** The homestead is not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them, previous to or at the time of the death of such husband or wife, except as provided in the law relating to homesteads.

Allowance for the family.

(1379) § **5.** If the amount so as aforesaid set apart be less than that allowed, and insufficient for the support of the widow and children, or either, or, if there be no such personal property to be set apart, and if there be other estate of the decedent, the court may in its discretion make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, ac-

cording to their circumstances, during the progress of the settlement of the estate, which in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration.

Allowance is a preferred claim.

(1380) § **6**. Any allowance made by the court in accordance with the provisions of this article must be paid in preference to all other charges, except funeral charges or expenses of administration, and any such allowance, whenever made, may, in the discretion of the court, take effect from the death of the decedent.

Who receives the property set apart.

(1381) § **7**. When personal property is set apart for the use of the family, in accordance with the provisions of this article, if the decedent left a widow or surviving husband, and no minor child, such property is the property of the widow or surviving husband. If the decedent left also a minor child, the one-half of such property shall belong to the widow or surviving husband, and the other half to the minor child; and if the decedent left more than one minor child, the one-third of such property shall belong to the widow or surviving husband and the remainder in equal shares to the minor children, and if the decedent left no widow or surviving husband, such property shall belong to the minor child, or, if more than one minor child, to them in equal parts.

Summary administration when estate does not exceed fifteen hundred dollars.

(1382) § **8**. If, upon the return of the inventory of the personal estate of an intestate, it appears that the value of the whole personal estate does not exceed the sum of fifteen hundred dollars, the probate court, by a decree for that purpose, must assign for the use and support of the widow and minor child, or children, if there be a widow or minor child, and if no widow then for the children, if there be any, the whole of the estate, after the payment of the funeral expenses, the expenses of the last sickness, and expenses of the administration, and there must be no further proceedings in the administration unless further estate be discovered; and when it so appears that the value of the whole estate does not exceed the sum of three thousand dollars, it is in the discretion of the probate court to dispense with the regular proceedings, or any part thereof prescribed in this article, and there must be had a summary administration of the estate, and an order of distribution thereof at the end of six months after the issuing of letters; the notice to creditors must be given to present their claims within four months after the first publication of such notice, and those not so presented are barred as in other cases.

Widow's separate property.

(1383) § **9**. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the preceding sections of this article, the whole property so set apart, other than her right in the homestead, must go to the minor children.

SECTION.
1. Notice to creditors to present claims.
2. Time for filing claims.
3. Proof of notice and want of same.
4. Claims not presented in time.
5. Proof of same.
6. Allowance of claims not proved.
7. Claim by probate judge.
8. Allowance and rejection of claims.
9. Claims filed in court.
10. Suit on rejected claim.
11. Claims barred cannot be allowed.
12. Presentment of claim must be made before suit.
13. Vacancy in administration not included in limitation.
14. Action pending at death.
15. Partial allowance of claim.
16. Effect of judgment against administrator or executor.
17. Judgment before death; how collected.
18. Death after verdict; judgment not a lien.
19. Reference of claim to referee.
20. Duties of referee.
21. Costs against representative.
22. Claim by executor or administrator.
23. Neglect to give notice to creditors.
24. Statement of claims.
25. Payment of claims not due.

Notice to creditors to present claims.

(1384) § **1.** Every executor or administrator must, immediately after his appointment, cause to be published in some newspaper in the county, if there be one, if not, then such newspaper as may be designated by the court, a notice to the creditors of the decedent, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice. Such notice must be published as often as the judge shall direct, but not less than once a week for four weeks. The judge may also direct additional notice by publication or posting. In case such executor or administrator resigns, or is removed, before the time expressed in the notice, his successor must give notice only for the unexpired time allowed for such presentation.

Time for filing claims

(1385) § **2.** The time expressed in the notice must be six months after its first publication, when the estate exceeds in value the sum of five thousand dollars, and four months when it does not.

Proof of notice and record of same.

(1386) § **3.** After the notice is given, as required by the preceding section, a copy thereof, with the affidavit of due publication, or of publication and posting, must be filed, and upon such affidavit or other testimony to the satisfaction of the court, an order or decree, showing that due notice to creditors has been given, must be made by the court and entered in the minutes and recorded.

Claims not presented in time allowed.

(1387) § **4.** If a claim arising upon a contract heretofore made, be not presented within the time limited in the notice, it is barred forever, except as follows: If it be not then due, or if it be contingent, it may be presented within one month after it becomes due or absolute; if it be made to appear by the affidavit of the claimant, to the satisfaction of the executor or administrator and the judge of the probate court, that the claimant had no notice as provided in this article, by reason of being out of the Territory, it may be presented at any time before a decree of distribution is entered, a claim for a deficiency remaining unpaid after a sale of property of the estate mortgaged or pledged must be presented within one month after such deficiency is ascertained. All claim

arising upon contracts hereafter made, whether the same be due, not date or contingent, must be presented within the time limited in the notice; and any claim not so presented is barred forever: *Provided, however*, That when it is made to appear by the affidavit of the claimant, as above provided, that he had no notice by reason of being out of the Territory, it may be presented as therein provided: *Provided further*, That nothing in this section, nor in this act contained, shall be construed to prohibit the right or limit the time of foreclosure of mortgages upon real property of decedents, whether heretofore or hereafter executed, but every such mortgage may be foreclosed within the time and in the mode prescribed in civil procedure, except, that no balance of the debt secured by such mortgage remaining unpaid after foreclosure shall be a claim against the estate, unless such debt was presented as required by law.

Proof of claims.

(1388) § **5.** Every claim which is due when presented to the administrator must be supported by the affidavit of the claimant or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the claimant or affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate is insolvent, no greater rate of interest shall be allowed upon any claim, after the first publication of notice to creditors, than is allowed by law on judgments obtained in the district court.

Claims paid when not proved and allowed.

(1389) § **6.** When it shall appear, upon the settlement of the accounts of any executor or administrator, that debts against the deceased have been paid without the affidavit and allowance prescribed by the preceding section, and shall be proven by competent evidence to the satisfaction of the probate court that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments or set offs, and that the estate is solvent, it shall be the duty of the said court to allow the said sums so paid in the settlement of said accounts.

Claim by probate judge, proceedings.

(1390) § **7.** Any judge of the probate court may present a claim against the estate of a decedent, for allowance, to the executor or administrator thereof; and if the executor or administrator allows or rejects the claim, he must, in writing, present the same to the county clerk of the county, who shall thereupon be substituted in the settlement of said estate in place of the probate judge, as provided by law, and the judge of the probate court presenting such claim, in case of its rejection by the executor or administrator, or by such county clerk, acting as judge, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

Allowance and rejection of claims.

(1391) § **8.** When a claim accompanied by the affidavit re-

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quired in this chapter, is presented to the executor or administrator, he must indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it must be presented to the judge for his approval, who must, in the same manner, indorse upon it his allowance or rejection. If the executor or administrator, or the judge refuse or neglect to indorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect is equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary, under seal, is *prima facie* evidence of such presentation and rejection. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of such time.

Claims filed in court.

(1392) § **9**. Every claim allowed by the executor or administrator, and approved by the judge, or a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the probate court, and he ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim is founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction, If the claim or any part thereof is secured by a mortgage or other lien which has been recorded or filed according to law in the office of the register of deeds of the county in which the land affected by it lies, it is sufficient to described the mortgage or lien, and refer to the date of its filing and volume, and page of its record. If, in any case, the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in court, he may withdraw the same when a copy of the same has been already, or is then, attached to his claim. A brief description of every claim filed must be entered by the judge in the register, showing the name of the claimant, the amount and character of the claim, rate of interest, and date of allowance.

Suit on rejected claim must be brought, when.

(1393) § **10**. When a claim is rejected, either by the executor or administrator, or the judge of the probate court, the holder must bring suit in the proper court, to-wit, before a justice of the peace, or in the district court, according to its amount, against the executor or administrator, within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred.

Claims barred cannot be allowed.

(1394) § **11**. No claim must be allowed by the executor or administrator, or by the judge, which is barred by the statute of limitations. When a claim is presented to the judge for his allowance, he may, in his discretion, examine the claimant and others, on oath, and hear any other legal evidence touching the validity of the claim.

Presentment of claim must be made before suit.

(1395) § **12**. No holder of any claim against an estate shall

maintain any action thereon, unless the claim is first presented to the executor or administrator.

Vacancy to administration not included in limitation.

(1396) § **13.** The time during which there shall be a vacancy in the administration, must not be included in any limitation herein prescribed.

Action pending at death.

(1397) § **14.** If an action is pending against the decedent at time of his death, the plaintiff must in like manner present his claim to the executor or administrator, for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentation required.

Partial allowance of claim.

(1398) § **15.** Whenever any claim is presented to an executor or administrator, or to the judge of the probate court, and he is willing to allow the same in part, he must state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in an action therefor, brought against the executor or administrator, unless he recovers a greater amount than that offered to be allowed.

Effect of judgment against executor and administrator

(1399) § **16.** A judgment rendered against an executor or administrator, in the district court or before a magistrate, upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator, and the judge of the probate court, and the judgment must be that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment must be filed in the probate court. No execution must issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

Judgments before death; how collected.

(1400) § **17.** When any judgment has been rendered for or against the testator or intestate in his life-time, no execution shall issue thereon after his death, except:

First. In case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interests.

Second. In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon.

A judgment against the decedent for the recovery of money, must be presented to the executor or administrator, like any other claim. If the execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof, and the officer making the sale must account to the executor or administrator for any surplus in his hands.

Death after verdict, judgment not a lien.

(1401) § **18.** A judgment rendered against a decedent, dying after verdict or decision on an issue of fact, but before judgment is rendered thereon, is not a lien on the real property of the decedent, but is payable in due course of administration.

Reference of claim to referee.

(1402) § **19.** If the executor or administrator doubts the cor-

rectness of any claim presented to him, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the judge of the probate court. Upon filing the agreement, and approval of the judge of the probate court, in the office of the clerk or the district court for the county or judicial subdivision in which the letters testamentary or of administration were granted, the clerk must, either in vacation or in term, enter a minute of the order referring the matter in controversy to the person so selected; or, if the parties consent, a reference may be had in the probate court; and the report of the referee, if confirmed, establishes or rejects the claim, the same as if it had been allowed or rejected by the executor or administrator and the probate judge.

Duties of the referee.

(1403) § **20.** The referee must hear and determine the matter, and make his report thereon to the court in which his appointment is entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation, and subject to the same control as in other cases of reference. The court may remove the referee, appoint another in his place, set aside or confirm his report, and adjudge costs, as in actions against executors or administrators, and the judgment of the court thereon shall be as valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process.

Costs against representative.

(1404) § **21.** When a judgment is recovered, with costs, against any executor or administrator, he shall be individually liable for such costs, but they must be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

Claim by executor.

(1405) § **22.** If the executor or administrator is a creditor of the decedent, his claim, duly authenticated by affidavits, must be presented for allowance or rejection to the judge of the probate court, and its allowance by the judge is sufficient evidence of its correctness, and it must be paid as other claims, in due course of administration. If, however, the judge rejects the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the judge of the probate court, who may appoint an attorney at the expense of the estate, to defend the action. If the claimant recover no judgment, he must pay all costs, including defendant's attorney's fee.

Neglect to give notice to creditors

(1406) § **23.** If an executor or administrator neglect for two months after his appointment to give notice to creditors, as prescribed by this article, the court must revoke his letters, and appoint some other person in his stead, equally or next in order, entitled to the appointment.

Executor and administrator to make statement of claims.

(1407) § **24.** At the same term at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate which have been presented to him, if so required by the court; and from term to term thereafter he must present a statement of claims subsequently

presented to him. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

Payment of claims not due.

(1408) § **25.** If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator may, by order of the probate court, pay the amount then accumulated, and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid. This article does not apply to debts existing at the date this law goes into effect, unless the creditor consent to accept the amount.

ARTICLE 7.—OF SALES AND CONVEYANCES OF PROPERTY OF DECEDENTS.

Of Sales in General.

SECTION.
1. All property chargeable for debts.
2. All sales ordered by the court.
3. Petitions for orders for sale.
4. But one sale, when.

Sales of Personal Property.

SECTION.
5. What personal property can be sold without notice.
6. Prerequisites of the sales of personal property.
7. Partnership interests and claims may be sold.
8. Causes for sale; what first sold.
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Sales of Real Estate, Interests Therein and Confirmations Thereof.

SECTION.
10. When the sale of property is necessary
11 Requisites of the petition for sale.
12 Order for hearing on the petition.
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22. Private sale; notice of bid.
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48. Representative may not be a purchaser.

All property of decedent is chargeable.

(1409) § **1.** All the property of a decedent, except as otherwise provided for the homestead and personal property set apart for the

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surviving wife or husband and minor child or children, shall be chargeable with the payment of the debts of the deceased, the expenses of the administration, and the allowance to the family. And the property, personal and real, may be sold as the court may direct, in the manner hereinafter prescribed. There shall be no priority as between personal and real property for the above purposes.

All sales ordered by the court.

(1410) § **2.** No sale of any property of an estate of a decedent is valid unless made under order of the probate court, except as otherwise hereinafter provided. All sales must be reported under oath, and confirmed by the probate court, before the title to the property sold passes,

Petition for orders for sale

(1411) § **3.** All petitions for orders of sale must be in writing, setting forth the facts showing the sale to be necessary, and upon the hearing, any person interested in the estate may file his written objections, which must be heard and determined. A failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing the necessity be stated in the order directing the sale.

When estate is insolvent

(1412) § **4.** When it appears to the court that the estate is insolvent, or that it will require a sale of all the property of the estate of every character, chargeable therewith, to pay the family allowance, expenses of administration and debts, there need be but one petition filed, but one order of sale made and but one sale had, except in cases of perishable property, which may be sold as provided in the next section. The probate court when a petition for the sale of any property for any of the purposes herein named, is presented, must inquire fully into the probable amount required to make all such payments and if there be no more estate chargeable therewith than sufficient to pay the same, may require but one proceeding for the sale of the entire available estate. In such case the petition must set forth all the facts required by the second section of the following article relating to sales of real estate.

What personal property can be sold without notice.

(1413) § **5.** At any time after receiving letters, the executor, administrator, or special administrator may apply to the judge and obtain an order to sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The order for the sale may be made without notice; but the executor, administrator or special administrator is responsible for the property, unless after making a sworn return, and on proper showing, the court shall approve the sale.

Prerequisites of the sale of personal property.

(1414) § **6.** If claims against the estate have been allowed, and a sale of property is necessary for their payment, or the expenses of administration, or for the payment of legacies, the executor or adminstrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notice of at least five days must be given of the hearing of the application, either by posting notices or by

advertising. He may also make a similar application, either in vacation or term, from time to time, so long as any personal property remains in his hands, and sale thereof is necessary. If it appears for the best interest of the estate, he may, at any time after filing the inventories, in like manner, and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, remaining and not set apart, whether necessary to pay debts or not.

Partnership interests and claims may be sold.

(1415) § **7.** Partnership interests, or interests belonging to any estate by virtue of any partnership formerly existing, interest in personal property pledged, and choses in action, may be sold in the same manner as other personal property, when it appears to be for the best interest of the estate. Before confirming the sale of any partnership interest, whether made to the surviving partner or to any other person, the judge must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner, if in the county and able to be present in court.

Causes of sales, what should be first sold.

(1416) § **8.** If it appear that a sale is necessary for the payment of the debts of the family allowance, or for the best interests of the estate, and the persons interested in the property to be sold, whether it is or is not necessary to pay the debts or family allowance, the court or judge must order it to be made. In making orders and sales for the payment of debts or family allowance, such articles as are not necessary for the support and subsistence of the family of the decedent, or are not specially bequeathed, must be first sold, and the court or judge must so direct.

Method and notice of sale.

(1417) § **9.** The sale of personal property must be made at public auction, and after public notice given for at least fifteen days, by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold; unless for good reasons shown, the court or judge orders a private sale, or a shorter notice. Public sales of such property must be made at the court house door, or at the residence of the decedent, or at some other public place, but no sale shall be made of any personal property which is not present at the time of sale, unless the court or judge otherwise order.

When the sale of porperty is necessary.

(1418) § **10.** When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against a decedent, or the debts, expenses or charges of administration, or legacies, the executor or administrator may also sell any real, as well as personal, property of the estate in his hands and chargeable for that purpose, upon the order of the probate court, and an application for the sale of real property may also embrace the sale of personal property.

Requisites of the petition for sale.

(1419) § **11.** To obtain an order for the sale of real property, he must present a verified petition in the probate court, or to the judge thereof, setting forth the amount of personal property that has come into his hands as assets, and how much thereof, if any, remains undisposed of; the debts outstanding against the decedent,

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as far as can be ascertained or estimated; and the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all the real property except the homestead, of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof; the names of the legatees and devisees, if any, and the heirs of the decedent, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary, will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree.

Order for hearing on the petition

(1420) § **12**. If it appears to the court or judge, from such petition, that it is necessary to sell the whole or some portion of such real estate for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed and an order thereupon made, directing all persons interested in the estate to appear before the court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

Service of the order, how and on whom.

(1421) § **13**. A copy of the order to show cause must be personally served on all persons interested in the estate, any general guardian of a minor so interested, and any legatee or devisee, or heir of the decedent, provided they are residents of the county, at least ten days before the time appointed for hearing the petition, or be published four successive weeks in such newspaper of the county as the court or judge shall direct. If all persons interested in the estate join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with and the hearing may be had at any time.

Hearing of the petition

(1422) § **14**. The probate court, at the time and place appointed in such order, or at such other time to which the hearing may be postponed, upon satisfactory proof of personal service or publication of a copy of the order, by affidavit or otherwise if the consent in writing to such sale of all parties interested is not filed, must proceed to hear the petition, and hear and examine the allegations and proof of the petitioners, and of persons interested in the estate who may oppose the application. All claims against the decedent not before presented, if the period of presentation has not elapsed, may be presented and passed upon at the hearing.

Attendance of witnesses may be compelled

(1423) § **15**. The executor, administrator, and witnesses may be examined on oath by either party, and process to compel them to attend and testify may be issued by the judge of the probate court in the same manner and with like effect as in other cases.

Sale of all the real estate may be authorized.

(1424) § **16**. If it appear necessary to sell a part of the real estate, and that by a sale thereof the residue of the estate, real or

personal, or some specific part thereof, would be greatly injured or diminished in value, or subjected to expense, or rendered unprofitable, or that after such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interests of all concerned that the same should be sold, the court may authorize the sale of the whole estate, or of any part thereof necessary and for the best interest of all concerned.

Order of sale.

(1425) § **17.** If the court be satisfied, after a full hearing upon the petition and examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary, for any of the causes mentioned in this article, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition as the court shall judge neeessary or beneficial.

Order must contain what; terms and method of the sale.

(1426) § **18.** The order of sale must describe the lands to be sold and the terms of sale, which may be for cash, or may be for one-third cash and the balance on a credit not exceeding two years, payable in gross or installments within that time, with interest, as the court may direct. The land may be sold in one parcel or in sub-divisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs. If it appears that any part of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at a public auction, unless, in the opinion of the court, it would benefit the estate to sell the whole or some part of such real estate at private sale; the court may if the same is asked for in the petition, order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial to the estate. If the executor or administrator neglects or refuses to make a sale under the order and as directed therein, he may be compelled to sell, by order of the court, made on motion, after due notice, by any party interested.

Petition for sale by third person

(1427) § **19.** If the executor or administrator neglects to apply for any order of sale when it is necessary, any person may make application therefor in the same manner as the executor or administrator, and notice thereof, must be given to the executor or administrator, before the hearing. The petition of such applicant must contain as many of the matters required for the petition of the executor or administrator as he can ascertain, and the decree of sale must fix the period of time within which the executor or administrator must make the sale.

Notice of time and place of sale.

(1428) § **20.** When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be posted in three of the most public places in the county in which the land is situated, and published in a newspaper if there be one printed in the same county, but if none; then in such paper as the court may direct, for three weeks successively next before the sale. The

lands and tenements to be sold must be described with common certainty in the notice.

Place and time of sale.

(1429) § **21.** Sales at public auction must be made in the county where the land is situated; but when the land is situated in two or more counties, it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and must be made on the day named in the notice of sale, unless the same is postponed.

Private sale; notice of, bids.

(1430) § **22.** When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county; if none, then in such paper as the court may direct, for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice, and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of the judge of the probate court, to which the return of the sale must be made, at any time after the first publication of notice, and before the making of the sale. If it is shown that it will be for the best interest of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice, in which case the notice of sale and the sale may be made to correspond with such order.

Limit of price, re-appraisement.

(1431) § **23.** No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent of the appraised value thereof, nor unless such real estate has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers must be appointed, and they must make an appraisement thereof in the same manner as in case of an original appraisement of an estate. This may be done at any time before the sale or the confirmation thereof.

Security when sale is made on credit.

(1432) § **24.** The executor or administrator must, when the sale is made upon a credit, take the notes of the purchaser for the purchase money with a mortgage on the property to secure their payment.

Return of the sale, hearing by the court, re-sale ordered, when.

(1433) § **25.** The executor or administrator, after making any sale of real estate, must make a return of his proceedings to the probate court, which must be filed by the judge, at any time subsequent to the sale, either in term or vacation. If the sale be made at public auction, and the return is made and filed on or

before the first day of the next term thereafter, no notice is required of such return or of the hearing thereof, but the hearing may be had upon the first day of the term, or any subsequent day to which the same may be postponed. If the sale be not made at public auction, or if made at public auction, a hearing upon the return of proceedings be asked for in the return, or is brought on for a hearing upon a day before the first day of the next term thereafter, or upon any other day than the first day of the next term after such sale, the court or judge must fix the day for the hearing, of which notice of at least ten days must be given by the judge, by notices posted in three public places in the county, or by publication in a newspaper, or both, as he may deem best, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing, the court must examine the return and witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and if it appear that a sum exceeding such bid at least ten per cent, exclusive of the expenses of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given, and the sale in all respects conducted as if no previous sale had taken place; if an offer of ten per cent more in amount than that named in the return be made to the court in writing, by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person or to order a new sale.

Objections to the sale.

(1434) § **26**. When return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation thereof, and may be heard thereon when the return is heard by the court or judge, and may produce witnesses in support of his objections.

Proportionate bids.

(1435) § **27**. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum, as above specified, cannot be obtained, or if the increased bid mentioned in the second preceding section be made and accepted by the court, the court must make an order confirming the sale, and directing conveyances to be executed. The sale from that time is confirmed and valid, and a certified copy of the order confirming it and directing conveyances to be executed must be recorded in the office of the register of deeds of the county within which the land sold is situated. If after the confirmation the purchaser neglects or refuses to comply with the terms of sale the court may, on motion of the executor or administrator, and after notice to the purchaser, order a re-sale to be made of the property, If the amount realized on such re-sale does not cover the bid and the expenses of the previous sale, such purchaser is liable for the deficiency to the estate.

Conveyance and record, effect of.

(1436) § **28**. Conveyances must thereupon be executed to the purchaser by the executor or administrator, and they must refer to the orders of the probate court authorizing and confirming the sale of the property of the estate, and directing the convey-

ances thereof to be executed, and to the record of the order of confirmation in the office of the register of deeds, by the date, volume and page of the record, and such reference shall have the same effect as if the orders were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest and estate of the decedent, in the premises, at the time of his death, if, prior to the sale, by operation of law or otherwise, the estate has acquired any right, title or interest in the premises, other than, or in addition to, that of the decedent at the time of his death, such right, title or interest also passes by such conveyance.

Proof of notice before order.

(1437) § **29.** Before any order is entered confirming the sale, it must be proved to the satisfaction of the court that notice was given of the sale as prescribed, and the order of confirmation must show that such proof was made.

Postponement of sale.

(1438) § **30.** If, at the time appointed for the sale, the executor or administrator deems it for the interest of the persons concerned therein that the same be postponed, he may postpone it from time to time, not exceeding in all three months.

Notice of postponment at place of sale.

(1439) § **31.** In case of a postponement, notice thereof must be given, by public declaration, at the time and place first appointed for the sale, and if the postponment be for more than one one day, further notice must be given by posting notices in three or more public places in the county where the land is situated, or publishing the same, or both, as the time and circumstances will admit.

Provisions of the will must be followed.

(1440) § **32.** If the testator makes provisions by his will or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they must be paid according to such provisions or designation, out of the estate thus appropriated, so far as the same is sufficient.

Sale of property under the will; confirmation.

(1441) § **33.** When property is directed by the will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the probate court, and at either public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

When provisions of will are insufficient.

(1442) § **34.** If the provision made by the will, or the estate appropriated therefor, is insufficient to pay the debts, expenses of administration, and family expenses, that portion of the estate not devised or disposed of by will, if any, must be appropriated and disposed of for that purpose according to the provisions of this article.

Property liable for debts.

(1443) § **35.** The estate, real and personal, given by will to legatees or devisees, is liable for the debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises, or legacies, but specific devises or legacies are exempt from such liability if it appears to the court necessary

to carry into effect the intention of the testator, and there is other sufficient estate.

Contribution from all the devisees and legatees.

(1444) § **36**. When an estate given by will has been sold for the payment of debts or expenses, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been taken therefor, and the probate court, when distribution is made, must, by decree for that purpose, settle the amount of the several liabilities, and decree the amount each person shall contribute, and reserve the same from their distributive shares respectively, for the purpose of paying such contribution.

Contract for the purchase of lands may be sold.

(1445) § **37**. If a decedent, at the time of his death, was possessed of a contract for the purchase of land, his interests in such land and under such contracts may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this article for the sale of lands of which he died seized, except as hereinafter provided.

Terms of the sale of such contract.

(1446) § **38**. The sale must be made subject to all payments that may hereafter become due on such contracts, and if there are any such the sale must not be confirmed by the probate court until the purchasers execute a bond to the executor or administrator, for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the probate judge shall approve.

What bond must specify.

(1447) § **39**. The bond must be conditioned that the purchaser will make all payments for such land that become due after the date of the sale, and will fully indemnify the executor or administrator and the persons so entitled against all demands, costs, charges and expenses by reason of any covenant or agreement contained in such contract.

Transfer of title.

(1448) § **40**. Upon the confirmation of the sale, the executor or administrator must execute to the purchaser an assignment of the contract, which vests in the purchaser, his heirs and assigns, all the right, title and interest of the estate, or of the persons entitled to the interest of the decedent in the lands sold at the time of the sale and the purchaser has the same rights and remedies against the vendor of such land as the decedent would have had if he were living.

Liens on realty paid.

(1449) § **41**. When any sale is made by an executor or administrator, pursuant to the provisions of this article, of lands subject to any mortgage or other lien, which is a valid claim against the estate of the decedent, and has been presented and allowed, the purchase money must be applied, after paying the necessary expenses of the sale, first to the payment and satisfaction of the mortgage or lien, and the residue, if any, in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay; and the land is subject to such mortgage or lien until the purchase money has been actually so applied. No claim against any estate

which has been presented and allowed is affected by the statute of limitations, pending the proceedings for the settlement of the estate. The purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, with interest, and any lawful costs and charges thereon, may be paid into the probate court, to be received by the judge thereof, whereupon the mortgage or lien upon the land must cease, and the purchase money must be paid over by the judge without delay, in payment of the expenses of the sale and in satisfaction of the debt, to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the executor or administrator, unless, for good cause shown, after notice to the executor or administrator, the judge otherwise directs.

Lien on the purchase land.

(1450) § **42**. At any sale under order of the probate court, of lands upon which there is a mortgage or lien, the holder thereof may become the purchase, and his receipt for the amount due him from the proceeds of the sale is a payment *pro tanto*. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay to the judge an amount sufficient to pay such expenses.

Misconduct of sale.

(1451) § **43**. If there is any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale, by which any person interested in the estate suffers damage, the party aggrieved may recover the same in an action upon the bond of the executor or administrator or otherwise.

Fraudulent sale.

(1452) § **44**. Any executor or administrator who fraudulently sells any real estate of a decedent, contrary to or otherwise than under the provisions of this article, is liable in double the value of the land sold, as liquidated damages, to be recovered in an action by the person having an estate of inheritance therein.

Limitation of time of beginning action to recover.

(1453) § **45**. No action for the recovery of any estate sold by an executor or administrator, under the provisions of this article can be maintained by any heir or other person claiming under decedent, unless it be commenced within three years next after the sale. An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud or other grounds upon which the action is based.

Persons under disabilities excepted.

(1454) § **46**. The preceding section shall not apply to minors, or others under any legal disibility to sue at the time when the right of action first accrues; but all such persons may commence an action at any time within three years after the removal of the disability.

Account of sale made by executor or administrator.

(1455) § **47**. When a sale has been made by an executor or administrator, of any property of the estate, real or personal, he must return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglect to make such return, he may be punished by attachment, or his letters may be revoked, one days notice having been first given him to appear and show cause why such attachment should not issue or such revocation should not be made.

Representative cannot be a purchaser.

(1456) § **48**. No executor or administrator must directly or

indirectly, purchase any property of the estate he represents, nor must he be interested in any sale.

ARTICLE 8.—OF THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS, AND OF THE MANAGEMENT OF ESTATE.

SECTION.
1. Possession; powers and duties of executors and administrators.
2. Actions by and against executors and administrators.
3. Action for waste; trespass and conversion.
4. Action against representative.
5. Inventory and bond by surviving partner.
6. Action against predecessor.
7. Joinder of parties.
8. Compounding debts.
9. Recovery of fraudulent conveyance.
10. Creditors may require action for recovery.
11. Sale of realty recovered.

Possession, powers and duties of executors and administrators.

(1457) § **1.** The executor or administrator must take into his possession all the estate of the decedent, real and personal, except the homestead and personal property not assets, and collect all debts due to the precedent or to the estate. For the purpose of bringing suits to quiet title or for partition of such estate, the possession of the executors or administrators is the possession of the heirs or devisees; such possession by the heirs or devisees is subject, however, to the possession of the executor or administrator, for the purposes of administration, as provided in this article.

Actions by and against executors and administrators.

(1458) § **2.** Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases and in the same courts in which the same might have been maintained by or against their respective testators and intestates.

Action for waste, trespass and conversion.

(1459) § **3.** Executors and administrators may in like manner maintain actions against any person who has wasted, destroyed, taken or carried away, or converted to his own use, the goods of their testator or intestate in his life-time. They must also maintain actions for trespass committed on the real estate of the decedent in his life-time.

Action against representatives.

(1460) § **4.** Any person, or his personal representatives, may maintain an action against the executor or administrator of any testator or intestate who in his lifetime had wasted, destroyed, taken, or carried away, or converted to his own use, the goods or chattels of any such person or committed any trespass on the real estate of such person.

Inventory and bond by surviving partner.

(1461) § **5.** When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner shall immediately, in company with the executor or administrator, or some other person or persons, to be appointed by the judge of the probate court, take and furnish to said executor or administrator a correct and full inventory, and a fair and just appraisement, of all partnership property and assets held and belonging to himself and the deceased partner, after which the surviving partner shall settle the business of the co-partnership. The surviving partner shall settle the affairs of the partnership without delay, and account with the executor or administrator, and

pay over such balances as may from time to time be payable to him in the right of the decedent. Upon the application of the executor or administrator, the judge of the probate court shall in all cases require the surviving partner to give a good and sufficient bond, to be approved by the judge of the probate court, for the honest and faithful disposal of the interest of the decedent in the co-partnership, and the prompt payment of the proceeds thereof over to the executor or administrator, and, in case of neglect or refusal, may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decedent could have maintained.

Action against predecessor.

(1462) § **6.** An administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

Joinder of parties.

(1463) § **7.** In actions by or against executors, it is not necessary to join those as parties to whom letters were issued, but who have not qualified.

Compounding debts.

(1464) § **8.** Whenever a debtor of a decedent is unable to pay all his debts, the executor or administrator, with the approbation of the probate judge, may compound with him, and give him a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized, when it appears to be just, and for the best interest of the estate.

Recovery of fraudulent conveyances.

(1465) § **9.** When there is a deficiency of assets in the hands of an executor or administrator, and when the decedent, in his life-time, has conveyed any real estate, or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt or duty of any person, or has so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator must commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights or credits which have been so conveyed by the decedent in his life-time, whatever may have been the manner of such fraudulent conveyance.

Creditors may require action for recovery.

(1466) § **10.** No executor or administrator is bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit, or give such security therefor to the executor or administrator, as the judge shall direct.

Sale of such realty.

(1467) § **11.** All real estate so recovered must be sold for the payment of debts, in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from the probate court; and the proceeds of all goods, chattels, rights and credits so recovered must be appropriated in the payment of the debts of the decedent, in the same manner as other property in the hand of the executor or administrator.

ARTICLE 9.—OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES. Chap. 19.

SECTION.
1. Representative to make deed under decedent's contract.
2. Application for conveyance; petition and notice.
3. Hearing of the application.
4. Decree on the hearing.
5. Deed and record thereof.
6. Dismissal and appeal.
7. Effect of conveyance.
8. Decree gives possession to persons entitled.
9. Enforcing the decree.
10. Death of claimant.
11. Surrender of possession ordered by the decree.

Representative to make deed under decedent's contract.

(1468) § **1.** When a person who is bound by contract in writing to convey any real estate, dies before making the conveyance, and in all cases when such decedent, if living, might be compelled to make such conveyance, the probate court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto.

Petition and notice of application for conveyances.

(1469) § **2.** On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the probate judge must appoint a time and place for hearing the petition, at a regular term of court, and must order notice thereof to be published at least four successive weeks before such hearing, in such newspaper in this Territory as he may designate.

Hearing of application.

(1470) § **3.** At a time and place appointed for the hearing, or at such other time to which the same may be postponed, upon satisfactory proof, by affidavit or otherwise, of the due publication of the notice, the court must proceed to a hearing, and all persons interested in the estate may appear and contest such petition, by filing their objections in writing, and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

Decree on hearing.

(1471) § **4.** If, after a full hearing upon the petition and objections, and examination of the facts and circumstances of the claim, the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner must be made, entered on the minutes of the court, and recorded.

Deed and record thereof.

(1472) § **5.** The executor or administrator must execute the conveyance according to the directions of the decree, a certified copy of which must be recorded with the deed in the office of the register of deeds of the county where the lands lie, and is *prima facie* evidence of the correctness of the proceedings and of the authority of the executor or administrator to make the conveyance.

Dismissal and appeal.

(1473) § **6.** If, upon hearing in the probate court, as hereinbefore provided, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the court must dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months thereafter, proceed in the district court to enforce a specific performance thereof.

Effect of such conveyance.

(1474) § **7.** Every conveyance made in pursuance of a decree of the probate court, as provided in this article, shall pass the title to the estate contracted for as fully as if the contracting party himself was still living and executed the conveyance.

Decree gives possession.

(1475) § **8.** A copy of the decree for a conveyance made by the probate court, and duly certified and recorded in the office of the register of deeds of the county where the lands lie, gives the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Enforcing the decree.

(1476) § **9.** The recording of any decree, as provided in the preceding section, shall not prevent the court making the decree from enforcing the same by other process.

Death of the claimant.

(1477) § **10.** If the person entitled to the conveyance die before the commencement of proceedings therefor under this article, or before the completion of the conveyance, any person entitled to succeed to his rights in the contract, or the executor or administrator of such decedent may, for the benefit of the person so entitled, commence such proceedings, or prosecute any already commenced, and the conveyance must be so made as to vest the estate in the persons entitled to it, or in the executor or administrator, for their benefit.

Surrender of possession ordered by the decree.

(1478) § **11.** The decree provided for in this article may direct the possession of the property therein described to be surrendered to the person entitled thereto, upon his producing the deed, and a certified copy of the decree, when, by the terms of the contract, possession is to be surrendered.

ARTICLE 10.—OF ACCOUNTS RENDERED BY EXECUTORS AND ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

Liabilities and Compensation of Executors and Administrators.

SECTION.
1. Requisites of contract by representatives.
2. Representatives chargeable with whole estate.
3. He shall make neither profit nor loss.
4. Not chargeable with uncollected debts.
5. Allowed expenses and certain fees.
6. Representative cannot purchase claims.
7. Fees and commissions.

Accounting and Settlement by Executors and Administrators.

SECTION.
8. Full statement of accounts must be rendered.
9. Citations upon failure.
10. Petition by third person for accounting.
11. Action upon petition.
12. Contest of the exhibit.
13. Compulsory attendance of representative.
14. Full account at end of year.
15. Representative must account to his successor.
16. Revocation of letters.
17. Representative must furnish vouchers for claims paid.
18. Settlement of items without vouchers.
19. Notice of settlement must be given.
20. Requisites of notice for final settlement.
21. Exceptions to the account.
22. Heirs may contest all matters in settlement.
23. Allowance of account.
24. Proof of notice.
25. Personalty sold, when.
26. Investment of funds.

The Payment of Debts of the Estate.

SECTION.
27. Order of payment of debts.
28. Limit as to mortgage.
29. Equal creditors within classes.
30. Certain expenses, when paid.
31. Order for payment of debts.
32. Advance payment.
33. Representative is personally liable.
34. Liability on failure to notice filing of claims.
35. Extension of time for final settlement.
36. Final account and settlement.
37. Provisions applying to final settlement.

Requisites of a contract by representative.

(1479) § **1.** No executor or administrator is chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Representative chargeable with whole estate

(1480) § **2.** Every executor and administrator is chargeable in his account with the whole of the estate of the decedent which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit and income of such estate.

He shall make neither profit or loss.

(1481) § **3.** He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any part be sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

Not chargeable with uncollected debts.

(1482) § **4.** No executor or administrator is accountable for any debts due to the decedent, if it appears that they remain uncollected without his fault.

Allowed expenses and certain fees.

(1483) § **5.** He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as are provided in this article, but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be a full compensation for his services, unless by a written instrument, filed in the probate court, he renounces all claim for compensation provided by the will.

Representatives cannot purchase claims.

(1484) § **6.** No administrator or executor shall purchase any claim against the estate he represents; and if he pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

Fees and commissions.

(1485) § **7.** When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of the whole estate accounted for by him, excluding all property not ranked as assets, as follows: For the first thousand dollars, at the rate of five per cent; for all above that sum, and not exceeding five thousand dollar, at the rate of four per cent; for all above that sum, at the rate of two and one-half per cent; and the same commission must be allowed administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable, for any ex-

traordinary service. The total amount of such allowance must not exceed the amount of commissions allowed by this section.

Full statement of accounts must be rendered

(1486) § **8.** At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants, and all other matters necessary to show the condition of its affairs.

Citation upon failure.

(1487) § **9.** If the executor or administrator fail to render an exhibit at the third term of the court, the judge of the probate court must issue a citation requiring him to appear and render it.

Petition by third person for accounting.

(1488) § **10.** Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

Action upon petition

(1489) § **11.** If the judge be satisfied, either from the oath of the applicant or from any other testimony offered, that the facts alleged are true, and considers the showing of the applicant sufficient, he must issue a citation to the executor or administrator, requiring him to appear at some day named in the citation, which must be during a term of the court, and render an exhibit as prayed for.

Contest of the exhibit.

(1490) § **12.** When an exhibit is rendered by an executor or administrator, any person interested may appear and, by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of neglect, or has wasted, embezzled, or mismanaged the estate, his letters must be revoked.

Compulsory attendance of representative.

(1491) § **13.** If any executor or administrator neglects or refuses to appear and render an exhibit, after having been duly cited, an attachment may issued against him and such exhibit enforced, or his letters may be revoked, in the discretion of the court.

Full account rendered at end of one year.

(1492) § **14.** Every executor or administrator must render a full account and a report of his administration at the expiration of one year from the time of his appointment. If he fail to present his account, the court must compel the rendering of the account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment must issue unless a citation has been first issued, served and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered must exhibit not only the debts which have been paid, but also a statement of all the debt which have been duly presented and allowed during the period embraced in the account.

Representative must account to his successor.

(1493) § **15.** When the authority of an executor or administrator ceases or is revoked for any reason he may be cited to account before the probate court at the instance of the person suc-

ceeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Revocation of letters.

(1494) § **16.** If the executor or administrator resides out of the county, or absconds, or conceals himself so that the citation cannot be personally served and neglects to render an account within thirty days after the time prescribed in this article, or if he neglects to render an account within thirty days after being committed where the attachment has been executed his letters must be revoked.

Representative must furnish vouchers for claims paid.

(1495) § **17.** In rendering his account, the executor or administrator must produce and file vouchers for all charges, debts, claims, and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

Settlement of items without vouchers.

(1496) § **18.** On the settlement of his account he may be allowed any item of expenditure, not exceeding fifteen dollars, for which no voucher is produced, if such item be supported by his own uncontradicted oath reduced to writing and certified by the judge, positive to the fact of payment, specifying when, where, and to whom it was made; but such allowances in the whole must not exceed three hundred dollars against any one estate, nor over ten per cent of the inventory appraised value of any estate under three thousand dollars.

Notice of settlement must be given.

(1497) § **19.** When any account is rendered for settlement the court or judge must appoint a day for the settlement thereof; the judge must thereupon give notice thereof, by causing notices to be posted in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the pay appointed for the settlement of the account, which must be on some pay of a term of the court. The court or judge may order such further notice to be given as may be proper.

Requisites of notice for final settlement.

(1498) § **20.** If the account mentioned in the preceding section be for a final settlement, and the estate be ready for distribution, the notice of the settlement must state these facts, and must be served, published or waived in the same manner as provided for sales of real property and interests therein; and on confirmation of the final account distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings. If, from any cause, the hearing of the account, or the partition and distribution be postponed, the order postponing the same to a day certain is notice to all persons interested therein.

Exceptions to the account.

(1499) § **21.** On the day appointed, or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

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Heirs may contest all matters on settlement.

(1500) § **22.** All matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation; and may allow a reasonable compensation to the referees, to be paid out of the estate of the decedent.

Allowance of account.

(1501) § **23.** The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their right to move for cause to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution; and in any action brought by any such person, the allowance and settlement of such account is *prima facie* evidence of its correctness.

Proof of notice.

(1502) § **24.** The account must not be allowed by the court until it is first proved that notice has been given as required by this chapter, and the decree must show that such proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

Personalty sold, when.

(1503) § **25.** Whenever it appears to the court on any hearing of an application for the sale of real property, that it would be for the interest of the estate that personal property of the estate, or some part of such property, should be first sold, the court may decree the sale of such personal property, or any part of it, and the sale thereof shall be conducted in the same manner as if the application had been made for the sale of such personal property in the first instance.

Investment of funds.

(1504) § **26.** Pending the settlement of any estate on the petition of any party interested therein, the probate court may order any moneys in the hands of the executor or administrators to be invested for the benefit of the estate, in securities of the United States. Such order can only be made after publication of notice of the petition in some newspaper to be designated by the judge.

Order of payment of debts.

(1505) § **27.** The debts of the estate must be paid in the following order:

First. Funeral expenses.

Second. The expenses of the last sickness.

Third. Funds necessary for the support of the family for ninety days.

Fourth. Taxes to the United States or the Territory, county or city.

Fifth. Debts having preference under the laws of the United States and of this Territory.

Sixth. Judgments rendered against the decedent in his lifetime, which are liens upon his property and mortgages in the order of their date.

Seventh. Demands or claims which are presented to the administrator for an allowance or proved within six months after notice of his appointment.

Eighth. All other demands against the estate.

Limit as to mortgage.

(1506) § **28.** The preference given in the preceding section to a mortgage only extends to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied must be classed with other demands against the estate.

Equal creditors within classes.

(1507) § **29.** If the estate be insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any class shall receive any payment until all those of the preceding class are fully paid.

When certain expenses paid.

(1508) § **30.** The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses, and the expenses of the last sickness, and the allowance made to the family of the decedent. He may retain in his hands the necessary expenses of administration, but he is not obliged to pay any other debt or any legacy until, as prescribed in this article, the payment has been ordered by the court.

Order for the payment of debts.

(1509) § **31.** Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this chapter, the court must make an order for the payment of the debts, as the circumstances of the estate require. If there be not sufficient funds in the hands of the executor or administrator, the court must specify in the decree the sum to be paid to each creditor. If the whole assets of the estate be exhausted by such payment or distribution, such account must be considered as a final account, and the executor or administrator is entitled to his discharge on producing and filing the necessary vouchers and proofs showing that such payments have been made, and that he has fully complied with the decree of the court.

Advance payments.

(1510) § **32.** If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, established or absolute, must be paid into the court, and there remain, to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If any creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section are not to be made when the estate is insolvent, unless a *pro rata* distribution is ordered.

Representative is personally liable for debts ordered paid.

(1511) § **33.** When a decree is made by the probate court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on such decrees as upon judgment in the district court, in favor of each creditor, and the same proceeding may be had under such execution as if it had

been issued from the district court. The executor or administrator is liable therefor on his bond to each creditor.

Liability on failure to notice filing of claims.

(1512) § **34.** When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment, has any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to creditors as required in sections 1384 and 1385, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed. This section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such day.

Extension of time for final settlement.

(1513) § **35.** If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled as provided in the next article; but if there be debts remaining unpaid, or, if, for other reasons, the estate be not in a proper condition to be closed, the court must give such extension of time as may be reasonable for a final settlement of the estate.

Final account and settlement.

(1514) § **36.** At the time designated in the last section, or sooner, if within that time all the property of the estate has been sold, or there are sufficient funds in his hand; for the payment of all debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator must render a final account, and pray a settlement of his administration.

Provisions applying to final settlement.

(1515) § **37.** If he neglect to render his account, the same proceedings may be had as prescribed in this article in regard to the first account to be rendered by him; and all the provisions of this article relative to the last mentioned account, and the notice and settlement thereof, apply to his account presented for final settlement.

ARTICLE II.—OF THE PARTITION, DISTRIBUTION, AND FINAL SETTLEMENT OF ESTATES. Chap. 19.

Partial Distribution Prior to Final Settlement.

SECTION.
1. Petition for legacy or share.
2. Notice of application to representative.
3. Who may resist petition.
4. Petition allowed, when.
5. Assessment against legatee or devisee.

Distribution and Final Settlement.

SECTION.
6. Court distributes the estates; deceased heir.
7. Decree of distribution must show what.
8. Delivery to executor of foreign will.
9. Petition and notice for decree.
10. Taxes paid before decree.

Distribution aud Partition.

SECTION.
11. Partition of estate by three commissioners.
12. Petition for partition.
13. When real estate is in different counties.
14. What part has been conveyed by heirs.
15. Shares set apart.
16. Joint shares set out, when; difference paid.
17. Whole to one person; others paid.
18. Sale of whole estate.
19. Notice to all persons before partition.
20. Report by the commissioners.
21. Residue of estate assigned.
22. Advancements to heirs; final decree binding on all.

Agents for Absent Parties—Discharge of Executor or Administrator.

SECTION.
23. Agent to take possession for non-resident.
24. Bond given by agent.
25. Sale of property when unclaimed for a year.
26. Agent to render account.
27. Liability of agent on bond.
28. Claimant for property.
29. Decree discharging representative.
30. Property discovered after final settlement.

(1516) § **1.** At any time after the lapse of four months from the issuing of letters testamentary or of administration, any heir, devisee or legatee may present his petition to the court for the legacy or share of the estate to which he is entitled, to be given to him upon his giving bond, with security, for the payment of his proportion of the debts of the estate. Petition for agency or share.

(1517) § **2.** Notice of the application must be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator. Notice of application to representative.

(1518) § **3.** The executor or administrator, or any person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee or legatee may make a similar application for himself. Who may resist petition.

Petition allowed when.

(1519) § **4.** If at the hearing it appears that the estate is but little indebted, and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

First. Each heir, legatee or devisee obtaining such order, before receiving his share or any portion thereof, to execute and deliver to the executor or administrator a bond, in such sum as shall be designated by the probate judge, with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled.

Second. The executor or administrator to deliver to the heir, legatee or devisee the whole portion of the estate to which he may be entitled, or only a part thereof, designating it.

If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed. The costs of these proceedings to be paid by the applicant, or if there be more than one, to be apportioned equally amongst them.

Assessment against legatee or devisee.

(1520) § **5.** When any bond has been executed and delivered, under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, the court, if satisfied of the necessity of such payment, must make an order accordingly, designating the amount and giving a time within which it must be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Court distributes the estate; deceased heir.

(1521) § **6.** Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee or devisee, the court must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance, must, without administration, be distributed to the other heirs at law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution, and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court and included in the order or decree; or the court or judge may order notice of the set-

tlement of such supplementary account, and refer the same as in other cases of the settlement of accounts.

Decree of distribution must show, what

(1522) § **7.** In the order or decree, the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, sue for and recover their respective shares from the executor or administrator, or any person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees or devisees, subject only to be reversed, set aside, or modified on appeal.

Delivery to executor of foreign will.

(1523) § **8.** Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this Territory, leaving a will which has been duly proved or allowed in the state, territory or district of his residence, and an authenticated copy thereof has been admitted to probate in this Territory, and it is necessary, in order that the estate or any part thereof may be distributed according to the will, that the estate in this Territory should be delivered to the executor or administrator in the state or place of his residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed in this Territory, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate ordered by virtue of this section must be made in the same manner as other sales of real estate of decedents by order of the probate court.

Petition and notice for decree.

(1524) § **9.** The order or decree may be made on the petition of the executor or administrator, or of any person interested in the estate. Notice of the application must be given by posting or publication, as the court may direct, and for such time as may be ordered. If partition be applied for, as provided in this chapter, the decree of distribution shall not divest the court of jurisdiction to order partition, unless the estate is finally closed.

Taxes paid before decree.

(1525) § **10.** Before any decree of distribution of an estate is made, the probate court must be satisfied, by the oath of the executor or administrator, or otherwise, that all Territorial, county, school and municipal taxes, legally levied upon personal property of the estate, have been fully paid.

Partition of estate by three commissioners.

(1526) § **11.** When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate court or judge, who must be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be endorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the

same authority, and is governed by the same rules as if three were appointed.

Petition for partition and notice.

(1527) § **12.** Such partition may be ordered and had in the probate court, on the petition of any person interested. But before commissioners are appointed, or a partition ordered by the probate court as directed in this chapter, notice thereof must be given to all persons interested, who reside in this Territory, or their guardians, and to the agents, attorneys, or guardians, if any in this Territory, of such as reside out of the Territory, either personally or by public notice, as the probate court may direct. The petition may be filed, attorneys, guardians, and agents appointed and notice given, at any time before the order or decree of distribution, but the commissioners must not be appointed until the order or decree is made distributing the estate.

When real estate is situated in different counties.

(1528) § **13.** If the real estate is in different counties, the probate court may, if deemed proper, appoint commissioners for all, or different commissioners for each county. The whole estate, whether in one or more counties, shall be divided among the heirs, devisees, or legatees as if it were all in one county, and the commissioners must, unless otherwise directed by the probate court, make division of such real estate, wherever situated within this Territory.

When part has been conveyed by heir.

(1529) § **14.** Partition or distribution of the real estate may be made as provided in this chapter, although some of the original heirs, legatees, or devisees may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

Shares set apart, how.

(1530) § **15.** When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right, by metes and bounds, or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

Joint shares set out when; difference to be paid.

(1531) § **16.** When the real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the females, and among children preferring the elder to the younger. The parties accepting the whole must pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction; or, in case of the minority of such party then to the satisfaction of his guardian, and the true value of the estate must be ascertained and reported by the commissioners. When the commissioners appointed to make partition are of the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to court, and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the commissioners, and on making or securing the payment as before provided, the court, if it appears

just and proper, must confirm the report and thereupon the assignment is complete, and the title to the whole of such real estate vests in the person to whom the same is so assigned.

Whole to one person, others to be paid.

(1532) § **17.** When any tract of rand or tenement is of greater value than any one's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others such sums as the commissioners shall award to make the partition equal, and the commissioners must make their award accordingly; but such partition must not be established by the court until the sums awarded are paid to the parties entitled to the same or secured to their satisfaction.

State of whole estate.

(1533) § **18.** When it appears to the court, from the commissiner's report, that it cannot be otherwise fairly divided, and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commission appointed for that purpose, and the proceeds distributed. The sale must be conducted, reported and confirmed in the same manner and under the same requirements as provided in sections from 1418 to 1456, inclusive.

Notice to all persons before partition.

(1534) § **19.** Before any partition is made, or any estate divided, as provided in this article, notice must be given to all persons interested in the partition, their guardians, agents or attorneys, by the commissioners, of the time and place when and where they shall proceed to make partition. The commissioners may take testimony, order surveys and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

Report by the commissioners.

(1535) § **20.** The commissioners must report their proceedings, and the partition agreed upon by them, to the probate court, in writing, and the court may, for sufficient reasons, set aside the report and commit the same to the same commissioners, or appoint others; and when such report is finally confirmed, a certified copy of the judgment or decree of partition made thereon, attested by the judge, under the seal of the court, must be recorded in the office of register of deeds of the county where the lands lie.

Residue of estate assigned.

(1536) § **21.** When the probate court makes a judgment or decree assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint commissioners to made partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that such partition is made.

Advancements to heirs; final decree binding on all.

(1537) § **22.** All questions as to advancements made or alleged to have been made, by the decedent to his heirs, may be heard and determined by the probate court, and must be specified in the decree assigning and distributing the estate; and the final judgment or decree of the probate court, or in case of an appeal, of the district court or Supreme Court, is binding on all parties interested in the estate.

Agent to take possession of property for non-resident.

(1538) § **23.** When any estate is assigned or distributed by a judgment or decree of the probate court, to any person residing out of and having no agent in this Territory, and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate as well as to act for such absent person in the distribution.

Bond given by agent.

(1539) § **24.** The agent must first give a bond to the probate judge, to be approved by him, conditioned that he shall faithfully manage and account for the estate. The court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Sale of property when unclaimed for a year.

(1540) § **25.** When personal property remains in the hands of the agent unclaimed for a year, and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds, after deducting the expenses of the sale allowed by the court, must be paid into the Territorial treasury. When the payment is made, the agent must take from the treasury duplicate receipts one of which he must file in the office of the Territorial Auditor, and the other in the probate court.

Agent to render account.

(1541) § **26.** The agent must render to the probate court appointing him, annually, an account, showing:

First. The value and character of the property received by him, what portion thereof is still on hand, what sold, and for what.

Second. The income derived therefrom.

Third. The taxes and assessments imposed thereon, for what, and whether paid or unpaid.

Fourth. Expenses incurred in the care, protection and management thereof, and whether paid or unpaid.

When filed, the probate court may examine witnesses and take proofs in regard to the account; and if satisfied from such accounts and proofs that it will be for the benefit and advantage of the persons interested therein, the court may, by order, direct a sale to be made of the whole or such parts or the real or personal property as shall appear to be proper, and the purchase money to be deposited in the Territorial treasury, to be receipted for and the receipts filed as in like cases before provided.

Liability of agent on bond.

(1542) § **27.** The agent is liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale, as required in the preceding sections, and may be sued thereon by any person interested.

Claimant for property.

(1543) § **28.** When any person appears and claims the money paid into the treasury, the probate court making the distribution must inquire into such claim, and, being first satisfied of his right thereto, must grant him a certificate to that effect, under its seal; and upon the presentation of the certificate to him, the Territorial Auditor must draw a warrant on the Treasurer for the amount.

Degree discharging representative.

(1544) § **29.** When the estate has been fully administered, and it is shown by the executor and administrator, by the production

of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court must make a judgment or decree discharging him from all liability to be incurred thereafter.

Property discovered after final settlement.

(1545) § **30.** The final settlement of an estate, as hereinbefore provided, shall not prevent a subsequent issue of letters testamentary or of administration, or of administration with the will annexed if other property of the estate discovered, or if it become necessary or proper for any cause that letters should be again issued.

ARTICLE 12.—OF ORDERS, DECREES, PROCESS, MINUTES, RECORDS, TRIALS AND APPEALS.

Orders, Decrees, Process, Minutes, Records, and Trials.

SECTION.
1. Requisites of orders and decrees.
2. Publications made how.
3. Recorded decree is notice to all parties.
4. Citations must contain, what.
5. Service of citation.
6. Personal notice, how given.
7. Time of service of citation.
8. Description of real property.
9. Trials and findings; judgments and executions.
10. Attorney appointed by the court.
11. Decree recorded in register's office.
12. Revocation for contumacy.
13. Service upon guardian.

Of Appeals and Appeal Bonds.

SECTION.
14. Appeals may be taken from what decisions.
15. Who may appeal.
16. Same, in special proceedings.
17. Period in which appeal may be taken.
18. Appeal taken, how.
19. Appeal bond, requisites.
20. Stay of execution, when.
21 Stay of commitment.
22 Justification of sureties.
23. Form of appeal bond and action thereon.
24. Letters of administration in spite of appeal.
25. Appeal does not stay proceedings.
26. Transcript to go to district court.
27, Powers of appellate court.
28. Question of fact tried de novo.
29. Neglect of probate record; penalty.
30. Dismissal of appeal; effect.
31. Costs, payable how.
32. Enforcement of decree by probate court.
33. Official bonds good in appeal.
34. Reversal for error does not affect lawful acts.

Order and decrees, requisites of

(1546) § **1.** Orders and decrees made by the probate court, or the judge thereof, need not recite the existence of facts, or the performance of acts upon which the jurisdiction of the court or judge may depend, but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided in this chapter. All orders and decrees of the court or judge must be entered at length in the minute book of the court, and upon the close of each regular or special term the judge must sign the same.

Publications; how made.

(1547) § **2.** When any publication is ordered, such publication must be made daily or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided

Chap. 19. in this chapter. The court or judge may, however, order a less number of publications during the period.

Recorded decree is notice to all persons.

(1548) § **3.** When it is provided in this chapter that any order or decree of a probate court or judge, or a copy thereof, must be recorded in the office of the county register of deeds, from the time of filing the same for record, notice is imparted to all persons of the contents thereof.

Citation must contain what.

(1549) § **4.** Citations must be directed to the person to be cited, signed by the judge; and issued under the seal of the court, and must contain:

First. The chapter of the proceeding.

Second. A brief statement of the nature of the proceeding.

Third. A direction that the person cited appear at a time and place specified.

Service of citation.

(1550) § **5.** The citation must be served in the same manner as a summons in a civil action.

Personal notice, how given.

(1551) § **6.** When a personal notice is required, and no mode giving it is prescribed in this chapter, it must be given by citation.

Time of service of citation.

(1552) § **7.** When no other time is specially prescribed in this chapter, citations must be served at least five days before the return day thereof.

Description of real property.

(1553) § **8.** When a complete description of the real property of an estate sought to be sold has been given and published in a newspaper, as required in the order to show cause why the sale should not be made, such description need not be published in any subsequent notice of sale, or notice of a petition for the confirmation thereof. It is sufficient to refer to the description contained in the publication of the first notice, as being proved and on file in the court.

Trials and findings, judgments and executions.

(1554) § **9.** All issues of facts joined in the probate court must be tried by said court, and in all such proceedings, the party affirming is plaintiff, and the one denying or avoiding is defendant. After the hearing, the court shall give, in writing, the findings of fact and conclusions of law, judgments thereon, as well as for costs, may be entered and enforced by execution or otherwise, by the probate court, as in civil actions. If the issues are not sufficiently made up by the written pleadings on file, the court, on due notice to the opposite party, must settle and frame the issues to be tried, and upon which the court may render judgment.

Attorney appointed by the court.

(1555) § **10.** At or before the hearing of petitions and contests for the probate of wills; for letters testamentary or of the administration; for sales of real estate and confirmation thereof; settlements, petitions and distributions of estates; and all other proceedings where all the parties interested in the estate are required to be notified thereof, the court may, in its discretion, appoint some competent attorney at law to represent in all such proceedings the devisees, legatees, heirs, or creditors of the decedent, who are minors and have no general guardian in the county, or who are non-residents of the Territory, and those interested, who, though they are neither such minors or non-residents, are

unrepresented. The order must specify the names of the parties for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee to be fixed by the court for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and upon distribution may be charged to the party represented by the attorney. If for any cause it becomes necessary, the probate court may substitute another attorney attorney for the one first appointed, in which case the fee must be proportionately divided. The non-appointment of an attorney will not affect the validity of any of the proceedings.

Decree recorded in registers office.

(1556) § **11.** When a judgment or decree is made, setting apart and defining the homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the register of deeds of the county in which the real property is situated.

Revocation for contumacy.

(1557) § **12.** Whenever an executor, administrator, or guardian is committed for contempt, in disobeying any lawful order of the probate court or the judge thereof, and has remained in custody for thirty days without obeying such order or purging himself otherwise of the contempt, the probate court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint some other person, entitled thereto, executor, administrator or guardian in his stead.

Service upon guardian.

(1558) § **13.** Whenever an infant, insane or incompetent person, has a guardian of his estate residing in this Territory, personal service upon the guardian of any process, notice, or order of the probate court concerning the estate of the deceased person, in which the ward is interested, is equivalent to service upon the ward; and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward, and waive any process, notice, or order to show cause which an adult or a person of sound mine might do.

Decisions from which appeals may be made.

(1559) § **14.** An appeal may be taken to the district court from a judgment, decree or order of the probate court:

First. Granting, or refusing, or revoking letters testamentary or of administration, or of guardianship.

Second. Admitting, or refusing to admit, a will to probate.

Third. Against or in favor of the validity of a will or revoking the probate thereof.

Fourth. Against or in favor of setting apart property, or making an allowance for a widow or child.

Fifth. Against or in favor of directing the petition, sale or conveyance of real property.

Sixth. Settling an account of an executor, or administrator or guardian.

Seventh. Refusing, allowing or directing the distribution or partition of an estate, or any part thereof or the payment of a debt, claim, legacy or distributive share; or,

Eighth. From any other judgment, decree or order of the probate court, or of the judge thereof affecting a substantial right.

Who may appeal.

(1560) § **15.** Any party aggrieved may appeal as aforesaid, except where the decree or order of which he complains, was rendered or made upon his default.

Same as to parties not in special proceedings.

(1561) § **16.** A person interested in the estate or funds affected by the decree or order, who was not a party to the special proceeding in which it was made, but who was entitled by law to be heard therein, upon his application, or who has acquired, since the decree or order was made, a right or interest which would have entitled him to be heard, if it had been previously acquired, may also appeal as prescribed in this artice. The facts which entitle such a person to appeal, must be shown by an affidavit which must be filed with the notice of appeal.

Period in which appeal must be taken.

(1562) § **17.** An appeal by a party, or by a person interested who was present at the hearing, must be taken within ten days, and an appeal by a person interested, who was not a party and not present at the hearing, within thirty days from the date of the judgment, decree or order appealed from.

Appeal, how taken.

(1563) § **18.** The appeal must be made:

First. By filing a written notice thereof with the judge of the probate court, stating the judgment, decree, or order appealed from, or some specific part thereof, and whether the appeal is on a question of law, or of fact, or of both, and, if of law alone, the particular grounds upon which the party intends to rely on his appeal; and,

Second. By executing and filing within the time limited in the preceding section, such bond as is required in the following sections. It shall not be necessary to notify or summon the appellee or respondent to appear in the district court, but such respondent shall be taken and held to have notice of such appeal in the same manner as he had notice of the pendency of the proceedings in the probate court.

Appeal bond, requisites of.

(1564) § **19.** The appeal bond shall be in such sum as the judge of the probate court shall require and deem sufficient, with at least two sufficient sureties to be approved by the judge, conditioned that the appellant will prosecute his appeal with due diligence to a determination, and will abide, fulfill and perform whatever judgment, decree or order may be rendered against him in that proceeding by the district court, and that he will pay all damages which the opposite party may sustain by reason of such appeal, together with all costs that may be adjudged against him.

Stay of execution, when.

(1565) § **20.** If the judgment, decree or order appealed from be for, or direct, the payment of money, or the delivery of any property, or grant leave to issue an execution, the appeal shall not stay the execution thereof, unless the appeal bond be furthermore conditioned to the effect that if the judgment, decree or order, or any part thereof be affirmed, or the appeal be dismissed, the appellant shall pay the sum so directed to be paid or levied, or, as the case may require, shall deliver the property so directed to be delivered, or the part thereof as to which the judgment, decree or order shall be affirmed.

Stay of commitment.

(1566) § **21.** An appeal from any judgment, decree or order directing the commitment of any person, does not stay the execution thereof, unless the appeal bond be also to the effect that if the judgment, decree or order appealed from be affirmed, or the appeal be dismissed, the appellant shall, within twenty days after such affirmance or dismissal, surrender himself in obedience to the judgment, decree or order, to the custody of the sheriff to whom he was committed. If the condition of such bond be violated, it may be prosecuted in the same manner and with the same effect as an administrator's official bond; and the proceeds of the action must be paid or distributed, as directed by the probate court, to or among the persons aggrieved, to the extent of the pecuniary injuries sustained by them, and the balance, if any, must be paid into the county treasury.

Justification of sureties.

(1567) § **22.** The sureties in every appeal bond must justify in the manner required in sections from 1321 to 1340, inclusive; and the respondent may apply to the appellate court or the judge thereof, upon notice, for on order requiring the appellant to increase the sum fixed by the judge of the probate court, or to give additional security; and if the applicant make default in giving a new bond, pursuant to an order to increase the same, or to give additional security, the appeal may be dismissed.

Form of appeal bond; action upon.

(1568) § **23.** Every appeal bond must be to the Territory of Oklahoma; must contain the name and residence of each of the sureties thereto, and must be filed in the probate court. The judge of the probate court may, at any time, in his discretion, make an order authorizing any person aggrieved to bring an action on the bond, in his own name or in the name of the Territory. When it is brought in the name of the Territory, the damages collected must be paid over to the probate court, and therein distributed as justice may require.

Letters of administration to issue in spite of appeal

(1569) § **24.** An appeal from the decree or order admitting a will to probate, or granting letters testamentary, or letters of administration, does not stay the issuing of letters where, in the opinion of the probate judge, manifested by an entry upon the minutes of the court, the preservation of the estate requires that such letters should issue, But the letters so issued do not confer power to sell real property by virtue of any provision in the will, or to pay or satisfy legacies or to distribute the property of the decedent among the next of kin, until the final determination of the appeal.

Appeal does not stay proceedings.

(1570) § **25.** An appeal from a decree or order revoking probate of a will, letters testamentary, letters of administration or letters of guardianship, or from a decree or order suspending or removing an executor, administrator or guardian, or removing or suspending a testamentary trustee or a person appointed by the probate court, or appointing an appraiser of personal property, does not stay the execution of the decree or order appealed from.

Transcript to go to district court on appeal.

(1571) § **26.** The judge of the probate court must, within ten days from the filing of the notice of appeal and the giving of the required bond, cause a certified copy thereof and of the judgment decree or order, or specific part thereof appealed from, and of the

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the minutes, records, papers and proceedings in the case, to be transmitted to the clerk of the district court of the county or judicial subdivision, to be filed in his office; and the appeal may be heard and determined at any day thereafter by said court, at any general special or adjourned term; and if the appellant make no appearance when the case is called for trial, or otherwise fail to prosecute his appeal, the respondent may, on motion, have the appeal dismissed, or may open the record and move for an affirmance.

Powers of the appellate court.

(1572) § **27.** The plaintiff in the probate court shall be the plaintiff in the district court, and when the appeal is on questions of law alone the appellate court may reverse, affirm or modify the judgment, decree or order, or the part thereof appealed from, and every immediate order which it is authorized by law to review, in any respect mentioned in the notice of appeal, and as to any or all of the parties, and it may order a new hearing. Upon such appeal, so much of the evidence as may be necessary to explain the grounds, and no more, may be certified into the appellate court.

Question of fact tried de novo.

(1573) § **28.** When the appeal is on questions of fact, or on questions of both law and fact, the trial in the district court must be *de novo*, and shall be conducted in the same manner as if the case and proceedings had lawfully originated in that court; and such appellate court has the same power to decide the questions of fact which the probate court or judge had, and it may, in its discretion, as in suits in chancery, and with like effect, make an order for the trial by jury of any or all the material questions of fact arising upon the issues between the parties, and such an order must state distinctly and plainly the questions of fact to be tried.

Neglect of probate judge to transmit record, penalty.

(1574) § **29.** If the judge of the probate court neglect or refuse to make or transmit such certified copies as are hereinbefore required to be transmitted to the clerk of the district court in cases of appeal, he may be compelled by the district court by an order entered, upon motion, to do so; and he may be fined, as for contempt, for any such neglect or refusal. A certified copy of such order may be served upon the probate judge by the party or his attorney.

Dismissal of appeal affirms probate court.

(1575) § **30.** The dismissal of an appeal by the district court is in effect an affirmance of the judgment, decree or order appealed from; and when an appellant shall have given, in good faith, notice of appeal, but omits, through mistake, to do any other act necessary to perfect the appeal or to stay proceedings, the appellate court may permit an amendment, on such terms as may be just.

Costs, payable how

(1576) § **31.** Such appellate court may award to the successful party the costs of the appeal; or it may direct that such costs abide the event of a new hearing, or of the subsequent proceedings in the probate court. In either case the costs may be made payable out of the estate or fund, or personally by the unsuccessful party, as directed by the appellate court; or, if no such direction be given, as directed by the probate court.

(1577) § **32.** When a judgment decree or order, from which an appeal has been taken, is wholly or partly affirmed, or is modified by the judgment rendered by the district court upon such appeal, it must be enforced, to the extent authorized by the latter judgment, by the probate court, in like manner as if no appeal therefrom had been taken; and the district court must direct the proceedings to be remitted for that purpose to the probate court or to the judge thereof. Enforcement of decree by probate court.

(1578) § **33.** When an executor or administrator who has given an official bond appeals from a judgment, decree or order of the probate court or judge, made in the proceedings had upon the estate of which he is administrator or executor, his said bond stands in the place of an appeal bond, and the sureties therein are liable as on such appeal bond. Official bonds good on appeal.

(1579) § **34.** When the order or decree appointing an executor, or administrator, or guardian, is reversed on appeal for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate, performed by such executor, or administrator or guardian, if he have qualified, are as valid as if such order or decree had been affirmed. Reversal for error does not affect lawful acts.

ARTICLE 13.—OF GUARDIAN AND WARD.

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Guardians of persons and estates.

(1580) § **1.** The probate court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either, or both of them, of minors who have no guardian legally appointed by will, or deed, and who are inhabitants or residents of the county, or who reside without the Territory and have estate within the county. Such appointment may be made on the petition of a relative or other person in behalf of such minor. Before making the appointment the judge must cause such notice as he deems reasonable to be given to the relatives of the minor residing in the county, and to any person having care of such minor.

When minor may nominate.

(1581) § **2.** If the minor is under the age of fourteen years, the probate judge may nominate and appoint his guardian; if he is above the age of fourteen years, he may nominate his own guardian, who if approved by the judge must be appointed accordingly. And the probate court, in appointing a guardian is to be guided by the considerations named in the civil code.

Judge may appoint guardian, when.

(1582) § **3.** If the guardian nominated by the minor be not approved by the judge, or if the minor resides out of the Territory, or if, after being duly cited by the judge, he neglects for ten days to nominate a suitable person, the judge may nominate and appoint the guardian, in the same manner as if the minor was under the age of fourteen years.

When minor may appoint.

(1583) § **4.** When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he has attained that age, may appoint his own guardian, subject to the approval of the probate judge.

Father or mother entitled to appointment

(1584) § **5.** The father of the minor, if living, and in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, must be entitled to the guardianship of the minor.

Guardian has custody of minor.

(1585) § **6.** If the minor has no father or mother living competent to have the custody and care of his education, the guardian appointed shall have the same.

(1586) § **7.** Every guardian appointed shall have the custody and care of the education of the minor, and the care and management of his estate, until such minor arrives at the age of majority, or marries, or until the guardian is legally discharged.

Guardian has charge until majority or marriage.

(1587) § **8.** Before the order appointing any person guardian under this chapter takes effect, and before letters issue, the judge must require of such person a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law; and the following conditions shall form and constitute a part of every such bond, without being expressed therein:

Guardian to give bond to minor; conditions, letters of guardianship.

First. To make an inventory of all the estate, real and personal, of his ward that comes to his possession or knowledge, and to return the same within such time as the judge may order.

Second. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody and education of the ward.

Third. To render an account on oath of the property, estate and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court directs; and at the expiration of his trust to settle his accounts with the probate judge, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto.

Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form the letters of guardianship must be substantially the same as letters of administration; and the oath of the guardian must be indorsed thereon that he will perform the duties of his office, as such guardian, according to law.

(1588) § **9.** When any person is appointed guardian of a minor, the probate judge may, with the consent of such person, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education and welfare of the minor. The performance of such conditions is a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible.

Additional conditions as to care, treatment and education of minor.

(1589) § **10.** All letters of guardianship issued, and all guardians' bonds executed under the provisions of this article, with the affidavits and certificates thereon, must be recorded by the judge of the probate court having jurisdiction of the persons and estates of the wards.

Record of letters and bond.

(1590) § **11.** If any minor, having a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education

Extra expenses of minor.

and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the probate court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Testamentary guardians.

(1591) § **12.** Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties with regard to the person and estate of his ward, as guardians appointed by the probate court, except so far as their powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed.

Guardians ad litem.

(1592) § **13.** Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein.

Petitions for guardians of insane or incompetent persons

(1593) § **14.** When it is represented to the probate court upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, the judge must cause notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed, and such person if able to attend, must be produced before him on the hearing.

Hearing of petition and appointment.

(1494) § **15.** If after a full hearing and examination upon such petition, it appears to the judge of the probate court that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate, with the powers and duties in this chapter specified.

Powers of guardian and bond

(1595) § **16.** Every guardian appointed as provided in the preceding section, has the care and custody of the person of his ward, and the management of all his es tate, until such guardian is legally discharged; and he must give bond to such ward, in like manner and with like conditions, as before prescribed with respect to the guardian of a minor.

Proceedings to declare restoration of insane or incompetent persons

(1596) § **17.** Any person who has been declared insane, or the guardian or any relative of such person, within the third degree, or any friend may apply by petition to the probate court of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state that such person is then sane. Upon receiving the petition, the judge must appoint a day for the hearing, and cause notice of the trial to be given to the guardian of the petitioner, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county. On the trial, the guardian or relative of the petitioner, and in the discretion of the judge, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in other cases, and may be called and exanined by the judge on his own motion. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity

shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease.

Payment of debts.

(1597) § **18.** Every guardian appointed under the provisins of this chapter, whether for a minor or any other person, must pay all just debts due from the ward out of his personal estate and income of his real estate, if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided by law for the sale of real estate of decedents.

May collect all accounts due to ward: appear in legal proceedings.

(1598) § **19.** Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the probate judge, compound for the same and give discharges to the debtors on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend.

Rules for management of estate of ward.

(1599) § **20.** Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward, and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order of the probate court therefor, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

Maintenance and support of ward.

(1600) § **21.** When a guardian has advanced, for the necessary maintenance, support and education of his ward, an amount not disproportionate to the value of his estate or his condition of life, and the same is made to appear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefore in his settlement. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support or education, for his ward, the court may order him to do so, and enforce such order by proper process. Whenever any third person, at his request supplies a ward with such suitable and necessary maintenance, support or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

Assent to partition of real estate.

(1601) § **22.** The guardian may join in and assent to a partition of the real estate of the ward, whenever such assent may be given by any person.

Inventory and account of estate of ward.

(1602) § **23.** Every guardian must return to the probate court an inventory of the estate of his ward within three months after his appointment, and annually thereafter. When the value of the estate exceeds the sum of twenty thousand dollars, semi-annual returns must be made to the probate court. The court may, upon application made for that purpose by any person, compel the guardian to render an account to the probate court of the estate

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or his ward. The inventories and accounts so to be returned or rendered, must be sworn to by the guardian. All the estate of the ward described in the first inventory must be appraised by appraisers appointed, sworn, and acting in the manner provided for regulating the settlement of the estate of decedents. Such inventory, with the appraisement of the property therein described, must be recorded by the judge of the probate court, in a proper book kept in his office for that purpose. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward, or for his benefit, the like proceedings must be had for the return and appraisement thereof that are herein provided in relation to the first inventory and return.

Settlement at end of year

(1603) § **24.** The guardian must, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his accounts to the probate court for settlement and allowance.

Account by one of joint guardians.

(1604) § **25.** When an account is rendered by two or more joint guardians, the probate judge may, in his discretion, allow the same upon oath of any of them.

Expenses and pay of guardians.

(1605) § **26.** Every guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable.

Sale of property may be made, when

(1606) § **27.** When the income of an estate under guardianship is sufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor.

Sale of property for investment.

(1607) § **28.** When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of his ward his real estate, or some part thereof, should be sold, and the proceeds thereof put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an offer therefor.

Proceeds of sale, how applied.

(1608) § **29.** If the estate is sold for the purposes mentioned in this article, the guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Investment, made how.

(1609) § **30.** If the estate be sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

Petition for sale.

(1610) § **31.** To obtain an order for such sale, the guardian must present to the probate court of the county in which he was

appointed guardian, a verified petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale.

Hearing and order.

(1611) § **32.** If it appear to the court or judge, from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court or judge must thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before the court, at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it is necessary or would be beneficial to the ward to sell the personal estate or some part of it, the court must order the sale to be made.

Order served on whom

(1612) § **33.** A copy of the order must be personally served on the next of kin of the ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or must be published at least three successive weeks in a newspaper printed in the county, or if there be none printed in the county, then in such newspaper as may be specified by the court or judge in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served personally or by publication.

Hearing upon the order.

(1613) § **34.** The probate court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear and examine the proofs and allegations of the petitioner and of the next of kin, and of all other persons interested in the estate who oppose the application.

Attendance of witnesses.

(1614) § **35.** On the hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the probate court or judge, in the same manner and with like effect as in cases provided for in the settlement of the estate of decedents.

Costs awarded when order objected to.

(1615) § **36.** If any person appears and objects to the granting of any order prayed for under the provisions of this article, and it appears to the court that either the petition or the objection thereto is sustained, the court may, in granting or refusing the order, award costs to the party prevailing, and enforce the payment thereof.

Order for sale shall state what.

(1616) § **37.** If, after a full examination, it appears necessary, or for the benefit of the ward, that his real estate, or some part thereof, should be sold, the court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale.

Bond to be given by guardian.

(1617) § **38.** Every guardian authorized to sell real estate, must, before the sale, give bond to the probate judge, with suffi-

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cient surety, to be approved by him, with condition to sell the same in the manner and to account for the proceeds of the sale as provided for in this article and article 7 of this chapter.

Law regulating estates of decedents governs unless otherwise declared.

(1618) § **39.** All the proceedings under petition of guardians for sales of property of their wards, giving notice and the hearing of such petitions, granting and refusing an order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, accounting and the settlement of accounts must be had and made as provided and required by the provisions of law concerning the estates of decedents unless otherwise specially provided in this chapter.

Order in force for one year.

(1619) § **40.** No order of sale granted in pursuance of this article continues in force more than one year after granting the same, without a sale being had.

Terms of sale security

(1620) § **41.** All sales of real estate of wards must be for cash, or for part cash and part deferred payments, not to exceed three years, bearing date from date of sale, as, in the discretion of the probate judge is most beneficial to the ward. Guardians making sales must demand and receive from the purchaser's bond and mortgage on the real estate sold, with such additional security as the judge deems necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

Order to invest proceeds.

(1621) § **42.** The probate court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein; and the probate court may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects, as circumstances require.

Guardian for non-resident ward

(1622) § **43.** When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this Territory, and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the probate judge of any county in which there is any estate of such absent person, for the appointment of a guardian; and if, after notice given to all interested, in such manner as the judge orders, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

Powers same as in other cases.

(1623) § **44.** Every guardian appointed under the preceding section has the same powers and performs the same duties, with respect to the estate of the ward found within the Territory, and with respect to the person of the ward, if he shall cease to reside therein, as are prescribed with respect to any other guardian appointed under this article.

Guardian must give bond.

(1624) § **45.** Every such guardian must give bond to the ward,

in the manner and with like conditions as hereinbefore provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, must be confined to such estate and effects as come to his hands in this Territory.

First appointment is exclusive.

(1625) § **46.** The guardianship which is first lawfully granted, of any person residing without this Territory, extends to all the estate of the ward within the same, and excludes the jurisdiction of the probate court of every other county.

Removal o property.

(1626) § **47.** When the guardian and ward are both non-residents, and the ward is entitled to property in this Territory which may be removed to another territory, state or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the territory, state or foreign country of the residence of the ward, upon the application of the guardian to the judge of the probate court of the county in which the estate of the ward, or the principal part thereof, is situated.

Application for removal.

(1627) § **48.** The application must be made upon ten days notice to the resident executor, administrator or guardian, if there be such, and upon such application the non-resident guardian must produce and file a certificate, under the hand of the clerk, judge, surrogate or other authorized officer, and the seal of the court from which his appointment was derived, showing:

First. A transcript of the record of his appointment.

Second. That he has entered upon the discharge of his duties.

Third. That he is entitled by the laws of the territory, state or country of his appointment to the possession of the estate of the ward; or must produce and file a certificate under the hand and seal of the clerk, judge, surrogate or other authorized officer of the court having jurisdiction in the country of his residence, of the estates of persons under guardianship, or of the highest court in such territory, state or country, that by the laws of such country the applicant is entitled to the custody of the estate of his ward without the appointment of any court.

Upon such application, unless good cause to the contrary be shown, the judge of the probate court must make an order granting to such guardian leave to take and remove the property of his ward to the territory, state or place of his residence, which is authority to him to sue for and receive the same in his own name, for the use and benefit of his ward.

Effect of order for removal.

(1628) § **49.** Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the probate court the receipt therefor of the foreign guardian of such absent ward.

Concealment or embezzlement of property of ward.

(1629) § **50.** Upon complaint made to him by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the ward or to his estate, the judge of the probate court may

cite such suspected person to appear before him, and may examine and proceed with him on such charge in the manner provided by law with respect to persons suspected of, and charged with, concealing or embezzling the effects of a decedent.

Cause for removal of guardian.

(1630) § **51.** When a guardian appointed either by the testator or the probate court or judge, becomes insane or otherwise incapable of discharging his trust, or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the probate court may, upon such notice to the guardian as the court may require, remove him and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the probate court may appoint another in the place of the guardian who has resigned or has been removed.

Marriage of minor terminates guardianship.

(1631) § **52.** The marriage of a minor ward terminates the guardianship; and the guardian of an insane or other person may be discharged by the judge of the probate court when it appears to him, on the application of the ward or otherwise, that the guardianship is no longer necessary.

New bonds may be required.

(1632) § **53.** The judge of the probate court may require a new bond to be given by a guardian whenever he deems it necessary, and may discharge the existing sureties from further liability, after due notice given as he may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

Bonds must be preserved.

(1633) § **54.** Every bond given by a guardian must be filed and preserved in the office of the probate judge of the county; and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the estate.

Limitation to three years for beginning action.

(1634) § **55.** No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of such discharge the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

Action for recovery of estate sold.

(1635) § **56.** No action for the recovery of any estate, sold by a guardian, can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal thereof.

More than one guardian, when.

(1636) § **57.** The court in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and liable in all respects as a sole guardian.

Powers of probate judge exercised either as judge of court

(1637) § **58.** The power conferred upon the probate judge in relation to guardians and wards may be exercised by him at cham-

bers or as the acts of the probate court, when holding such; and any order appointing a guardian must be entered as and become a decree of the court. The provisions of this chapter relative to the estates of decedents, so far as they relate to the practice in the probate or district courts, apply to proceedings under this article.

ARTICLE 16.—EXTENSION OF PROBATE JUDGE'S JURISDICTION AND DESCRIBING PROCEDURE.

SECTION.
1. Jurisdiction of probate court.
2. Practice and procedings in certain cases.
3. Judge to prepare calender.
4. When open.
5. Appeals to supreme court.
6. May grant injunctions and allow writs of *heabvas corpus*
7. Practice in criminal cases.
8. Probate judges fees in certain cases.

AN ACT extending the jurisdiction of the probate court in civil and criminal cases and prescribing the procedure therein and providign for appeals therefrom.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklama:

Jurisdiction of probate courts.

(1638) § **1.** Probate courts in their respective counties shall in addition to the powers conferred upon them by the probate chapter of the Territory, have and exercise the ordinary powers and jurisdiction of justices of the peace and shall in civil cases have concurrent jurisdiction with the district court in all civil cases in any sum not exceeding one thousand dollars exclusive of costs and in action of replevin where the appraised value of the property does not exceeds that sum and the provisions of the chapter on civil procedure relative to justices of the peace and to practice and proceedings in the district court shall apply to the proceedings in all civil actions, prosecuted before said probate courts: *Provided*, That probate courts shall not have jurisdiction:

First. In any action for malicious prosecution.

Second. In any action against officers for misconduct in office except where like proceedings can be had before justices of the peace.

Third. In actions for slander and libel.

Fourth. In actions upon contracts for sale of real estate.

Fifth. In any matter wherein the title or boundaries of land may be in dispute nor to order or decree the sale or partition of real estate.

Practice and proceedings in certain cases.

(1639) § **2.** In all cases commenced in said probate courts wherein the sum exceeds the jurisdiction of justices of the peace the pleadings and practice and proceedings in said court both before and after judgment shall be governed by the chapter on civil procedure of the Territory governing pleading and practice and proceedings in the district court. In all cases commenced in said probate courts that are within the jurisdiction of justices courts the practice and proceedings and pleadings both before and after

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judgment provided for in the justice,s procedure of the Territory shall be applicable to the practice pleadings and proceedings of said probate courts.

Judge to prepare calendar.

(1640) § **3.** The probate judge shall on the first day of each term prepare a calendar of the cases standing for trial at said term placing the causes on said calendar in the order in which the same are numbered on the docket and setting the cases for trial in such order upon convenient days during said term; and the provisions of the chapter on civil procedure of the Territory relative to the docket in district courts shall so far as they are applicable apply to said calendar.

When open.

(1641) § **4.** The probate courts of the Territory shall be deemed to be always open for the filing of papers and the issuance of processes in civil actions and for the purpose of taking and entering judgments by confession and for the purpose of trying all actions commenced therein that are triable under the justice's procedure of the Territory and for all probate business of their respective counties.

Appeals to supreme court.

(1642) § **5.** Appeals from the final judgment of said probate courts shall be allowed and taken to the supreme court of this Territory in the same manner as (from) the district court and with like effect when only questions of law are involved in the appeal. If questions of fact are to be re-tried in the appellate court the appeals shall be taken to the district court of the county in manner and form as appeals are taken from judgments of justices of the peace.

May grant injunctions and allow writs of habeas corpus.

(1643) § **6.** In all cases pending or to be brought in the probate court the probate judge shall have power and jurisdiction to allow injunctions, mandates, writs of prohibition and to make all other and further orders as may be necessary in cases pending in said court and to hear and determine motions made to vacate or modify the same, and generally to do as to actions pending in said courts any and all acts which the judges of the district courts are by law authorized to do. He may also in case of the absence of the district judge from his county allow injunctions in matters about to be brought or pending in the district court, but he shall not have power to vacate or modify the same. He shall have power to allow writs of *habeas corpus* in all cases provided by law and to hear and determine the same.

Practice in criminal cases.

(1644) § **7.** All criminal actions prosecuted in the probate court shall be brought in the same manner as similar actions in the justices courts; or shall be upon information of the county attorney based upon a sworn complaint and shall be under his direction and control; and warrants shall issue the same as in the justices courts: *Provided*, If the complaint or information be adjudged defective or insufficient it may be amended to any extent and sworn to until it is sufficient, and if the evidence fails to prove the crime charged, but tends to prove any other crime the information may be amended to charge the crime which the evidence tends to prove; and if that be a felony the trial shall be suspended and the accused shall be proceeded against by preliminary examination and bound over or discharged as the court shall deem just under

the evidence. If the information or complaint be amended, the court shall see that the defendant is not prejudiced thereby and if justice requires it shall grant to the accused time to prepare his defense to the information or complaint as amended.

Probate judges fees in certain cases.

(1645) § **8.** The probate judges for any services performed by or in any matter within the jurisdiction of a justice of the peace shall be allowed the same fees as are allowed by law to justices of the peace for like services and in all civil actions triable in a probate court of which a justice of the peace has no jurisdiction the probate judge shall be entitled to receive the same fees as are allowed to a clerk of the district court for like services and shall be allowed further fees as follows: For each days attendance upon trial of a case after the first day, two dollars; taking and approving bail bond, twenty-five cents; for entering voluntary appearance of defendant, twenty-five cents; commission on money collected on judgments without execution one per cent on the amount.

This act shall be in force and take effect from and after its adoption and legalization by act of Congress.

ARTICLE 15.—TRANSFER OF ACTIONS FROM COUNTY COURTS TO THE DISTRICT COURTS.

SECTION.
1. Action transferred from county courts to district courts.
2. Duty of county judge.
3. Jurisdiction of district court.
4. Transfer of records, books, files and papers.
5. Enforcement of judgment in district court.
6. Orders of county court enforced in district court.
7. Not to include probate matters.

AN ACT to transfer all actions and proceedings pending in the several county courts to the district courts.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Action transferred from county to district court.

(1646) § **1.** That upon the adjournment of the present session of the Legislative Assembly, all actions both civil and criminal and all other matters and proceedings, then pending in such county courts, shall be immediately transferred to the district court of the county where such county court has heretofore existed.

Duty of county judge.

(1647) § **2.** It shall be the duty of the judge of the county court immediately upon the adjournment of the present session of the Legislative Assembly, to certify all actions and proceedings then pending in the county court of his county to the district court of such county, and file the record thereof in the office of the clerk of that court.

Jurisdiction of district court.

(1648) § **3.** The district court shall upon the filing of such transcript and record, take jurisdiction of such actions and proceedings, and proceed therein in the same manner as though originally commenced in that court.

Transfer of records, books, files and papers.

(1649) § **4.** All records, books, files and papers heretofore filed in the county court, are hereby transferred to the district

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court and all such papers books, files and records shall have the same force and effect in all courts and places as other records of the district court.

Enforcement of judgment in district court.

(1650) § **5**. All judgments remaining in the county courts and unsatisfied at the time the records are transferred to the district court shall be enforced as judgments of the district courts in the same manner as though such judgments had been rendered in that court.

Duties of county clerk enforced in district court.

(1651) § **6**. All orders remaining unperformed shall be by the district court enforced, modified or revoked in the same manner as though originally made and entered in such court.

Not to include probate court.

(1652) § **7**. The provisions of this act shall not be construed to extend to any matter of probate jurisdiction pending in such county court nor the record thereof; but all such probate matter and record shall be, and they are hereby transferred to the probate court established by the Organic Act of this Territory.

This act shall take effect from and after the final adjournment of the first session of the first Legislature.

ARTICLE 14.—DUTIES OF PROBATE JUDGE.

AN ACT defining the duties of Probate Judge.

[Took effect December 25, 1890.]

SECTION.

1. Probate courts; clerk.
2. Business; court terms.
3. Office location; records and fixtures.
4. Judge's practice; when prohibited.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Probate court, clerk.

(1653) § **1**. There shall be a probate court held by the judge of the probate court in each organized county, which shall have the jurisdiction and proceed in the manner provided in the laws governing proceedings in probate courts and of guardians and wards. They shall be courts of record and shall have a seal and the judge thereof shall also be clerk of said court.

Business hours; court terms.

(1654) § **2**. The court shall be always open for the transaction of probate business, and the judge thereof shall especially attend his office and hold terms of the probate court, beginning on the first Mondays in January, March, May, July, September and November of each year, and continuing so long as shall be necessary,

Office, location, records and fixtures.

(1655) § **3**. The judge of the probate court shall keep his office at the county seat in such rooms as the county may provide, and his office shall be kept open at reasonable hours. He shall safely keep all the papers, books and records of his office or relating to any case or business of the probate court or before him as judge thereof, and receive and pay out, according to law, any money which by law may be payable to him. The county shall provide for such tables, desks, cases for books, and papers and all necessary books and papers and books of record and other property or furniture required for the office.

(1656) § 4. A judge of the probate court shall not be counsel or attorney in any civil action for or against any executor, administrator, guardian, trustee, minor or other person over whom or whose accounts he has or by law would have jurisdiction, whether such action relate to the business of the estate or not. Judge's practice, when prohibited.

This act shall take effect and be in force from and after the date of the final adjournment of the first session of this Legislative Assembly.

CHAPTER XX.—COURT—DISTRICT.

AN ACT to provide court stenographers for the District Courts of this Territory.

[Took effect December 23, 1890.]

SECTION.
1. Stenographer, appointments, requirments.
2. Duties and fees.
3. Transcript for court, fees; appeal.
4. Transcript for parties, fees.
5. To report for several counties; mileage.
6. Tenure of office; oath.
7. Notes, where filed, when testimony.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

(1657) § 1. The judge of the district in each judicial district, shall appoint whenever in his judgment it will expedite public business, and tend to the more economical administration of justice, a short-hand reporter who shall be well skilled in the art of stenography, and competent to perform the duties required of him, which competency shall be ascertained by the applicant writing correctly one hundred and twenty-five words per minute, for ten consecutive minutes in open court, the matter written not being previously known to him. Appointments, requirements.

(1658) § 2. It shall be the duty of such reporter under the direction of the court, to take down in short-hand the oral testimony of witnesses, the rulings of the court, the objections made and exceptions taken during the trial in all criminal cases, and in civil actions, when either of the parties so request and the judge directs it, and also such other matters as the court shall order. That in each civil action hereafter commenced, wherein an issue of fact is joined in any district court of this Territory, the sum of two dollars shall be taxed as costs and collected from the unsuccesful party in said action as stenographer's costs, and by the clerk of the court paid over to said stenographer when collected and shall be received by such stenographer as full compensation for his services as court stenographer in all civil cases: *Provided*, That in criminal cases the stenographer shall be paid out of the county treasury for the time actually employed in taking down testimony, the sum of five dollars per day, said fees to be paid by the county wherein such services shall be rendered upon the order of the judge. Duties and fees

(1659) § 3. The judge may upon the application of either party in a criminal case, direct such reporter to make out and file Transcript for court, fees, appeal.

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with the clerk of the court a transcript of his short-hand notes in long-hand, when the same is needed in such case, and he shall receive as compensation therefor, such sum as may be fixed by the judge, not exceeding six cents for each one hundred words, to be audited and paid as provided in section two of this act: *Provided, however*, That if before a transcript of the notes is ordered on application of the defendant or his attorney, the defendant shall present to the judge his affidavit that he intends in good faith, to take an appeal in the case and that such transcript is necessary to enable him to prosecute the appeal, and that the defendant has not the means to pay for the same, the court may, at its discretion, order the transcript made at the expense of the county.

Transcript for parties, fees.

(1660) § **4.** Such reporter shall on the request of either party, in a civil or criminal case, make out such transcript and deliver the same to the party desiring it, on payment of his fees therefor by such party at the rate of six cents per folio which shall be allowed, as taxable cost.

Report for several counties; mileage.

(1661) § **5.** Such reporter shall proceed from county to county where the district courts are held, when required by the judge, and be in attendance upon such court to perform such duties as shall be required of him, and shall receive as travelling expenses for each mile actually and necessarily travelled in going to and returning from such district courts, to be paid by the county to which he travels, the sum of five cents per mile. But no mileage shall be allowed where the distance travelled in each direction is less than fifty miles.

Tenure of office; oath.

(1662) § **6.** Such reporters shall hold their offices at the pleasure of the judges appointing them and shall take an oath to support the Constitution of the United States and the Organic Act of this Territory, and to honestly, faithfully and impartially perform the duties of their respective offices as provided in this act, whieh oath shall be filed in the office of the clerk of such court.

Notes, where filed, when testimony

(1663) § **7.** The short-hand reporter shall file his notes taken in any case with the clerk of the court in which the cause was tried, and the same shall be a part of the record in the cause. Any long-hand transcript of notes so filed, duly certified by the reporter of the court who took the evidence as correct, shall be admissible as evidence in all cases of like force and effect, as testimony taken in the cause by deposition, and subject to the same objections; said notes, or a transcript thereof, may be incorporated into any bill of exceptions by unmistakable reference thereto, and may be duly inserted therein. On appeal it shall be the duty of the reporter to furnish such transcript when demanded, as required by law. If any reporter ceases to be the official reporter of the court, and thereafter makes a transcript of the notes taken by him while acting as official reporter, he shall swear to the transcript as true and correct and when so verified, the transcript shall have the same force and effect as if certified while he was official reporter.

This act shall take effect and be in force from and after its passage and approval.

CHAPTER XXI.—COMMISSIONERS—TERRITORIAL.

ARTICLE.
1. Commissioners to act in states and other territories.
2. Commissioners to take depositions, notices.

ARTICLE 1.—COMMISSIONERS TO TAKE DEPOSITIONS; NOTICES.

SECTION.
1. Commissioner, powers and appointment.
2. Seal of office.
3. Power of acknowledgment.
4. Depositions, their scope and validity.
5. Commissioners, how qualified.

AN ACT providing for Territorial Commissioners.

[Took effect December 9, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

Commissioner, powers and appointment

(1664) § **1.** The Governor shall have power to appoint one or more commissioners in any state of the United States or of the territories belonging to the United States, or District of Columbia, who shall continue in office during the pleasure of the Governor, and shall have authority to take acknowledgment and proof of the execution of any deed or conveyance, or lease of any lands lying in this Territory, and of any contract, letter of attorney, or other writing under seal or not, to be used or recorded in this Territory.

Seal.

(1665) § **2.** Each commissioner so appointed as herein provided, shall have an official seal, on which shall be engraved the words "Commissioner of the Territory of Oklahoma," with his surname at length, and at least the initials of his christian name; also the name of the state or territory in which he has been commissioned to act, which seal must be so engraved as to make a clear impression on wax or wafer.

Power of acknowledgments.

(1666) § **3.** All acknowledgements and proofs as herein provided, taken according to the laws of this Territory, and certified to by such commissioner under his seal of office, and annexed to or endorsed on such instrument, shall have the same power and effect as if the same had been made before any officer authorized to perform such acts in this Territory.

Depositions.

(1667) § **4.** Every commissioner appointed as before mentioned shall have power to administer an oath which may be lawfully required in this Territory, to any person willing to take the same and to take and duly certify all depositions to be used in any of the courts of this Territory, in conformity to the laws thereof, either on interrogatories proposed under a commission from any court of this Territory, or by consent of parties, or on legal notice given to the opposite party, and all such acts shall be as valid as if done and certified according to law by a proper officer in this Territory.

Commissioners how qualified.

(1668) § **5.** Every such commissioner, before performing any

Chap. 21. duty, or exercising any power by virtue of his appointment must take and subscribe an oath or affirmation before a judge or clerk of some court of record having a seal of the state or territory in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of the Territory of Oklahoma, with a description and impression of his seal of office, to be filed in the office of the Secretary of the Territory.

This act shall take effect and be in force from and after the date of its approval.

ARTICLE 2.—COMMISSIONERS TO TAKE DEPOSITIONS; NOTICES.

SECTION.
1. Notice to take depositions.
2. Commissioner of depositions, duties and powers; testimony of witness.
3. Power conferred on the several courts by notice to take depositions.
4. Subpoenas.
5. Distance witness to travel, mileage; fees.
6. Witness, contempt imprisonment; inability to travel.
7. Notice, how served; testimony, when and how taken.
8. No notice given resident witness not having testified.
9. Continuances, conditions of.
10. Depositions, certified to and forwarded.
11. Costs, by whom paid.
12. The same, voluntary, before whom.

AN ACT to give force and effect to notices and commissions to take depositions and providing for appointment of commissioners of depositions

[Took effect December 2, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

Notice to take deposition.

(1669) § **1.** In all cases where notice that depositions will be taken in this Territory before a district judge or a commissioner of depositions in the district court, or before the judge of the county or probate court in this Territory, has been given in any state or territory in accordance with the laws thereof; and in cases where commissions have issued from a court of record of the United States or from a court of record of any state or territory or from any United States Land Office, within or without this Territory, or from a board of United States Townsite commissioners, duly signed by the clerk of the court, Register or Receiver of the United States land office or by some member of the townsite commission, as the case may be, and directed to a district judge or commissioner of depositions in the district court, or to the judge of a county or probate court, within this Territory, commanding such officer to take the depositions of witnesses, such notice shall give and commissions so issued when received shall confer upon the officers named and their respective courts the powers in this act provided.

Commissioner of depositions, testimony.

(1670) § **2.** The judge of each judicial district shall appoint some suitable person in each organized county of his district, as a court commissioner of depositions who shall hold his office during the pleasure of the judge. Such commissioner shall, before entering upon the discharge of his duties of such office, give a bond, and take an oath of office as required by law to be given and taken by

the county judges; and shall receive the same fees for like services; he shall perform such duties and exercise such powers as are imposed or conferred upon him by the laws of the Territory and by the provisions of this act, and for the purpose of this act, shall be known as the commissioner of depositions, and shall act under the control of the judge of the district court. When acting as commissioner of depositions, he shall have power to administer oaths, to order the clerk of the district court to issue process, and to order the same to be served; to compel witnesses to appear and testify fully; to cause the testimony given to be reduced to writing and signed by the witnesses, and to minute objections, and to rule on questions of evidence as in this act allowed; to regulate and control attorneys and parties before him; to punish for contempts, and to certify and return depositions as fully as could be done by the district court, or district judge, if that court or judge was personally acting in the matter: *Provided*, That no testimony so given by any witness shall ever be used as testimony against said witness in any criminal or civil action whatever in this Territory.

Power conferred by notice of deposition.

(1671) § **3.** When the notice or commission named in section one of this act is received by the judge of the district court, or commissioner of depositions, or by a judge of a county or probate court, such notice or commission shall confer upon the district court and its said commissioner, or on the probate or county judge, power to docket a case in the court. If the notice or commission shall run to the district judge or the commissioner of depositions, it shall [be] the duty of the clerk of the district court to docket in that court a case naming the parfies as plaintiffs and defendants, or contestants and contestees in the case, as in the notice or commission stated. If the notice or commission shall run to the judge of the county or probate court, then the judge of that court shall in like manner, docket a case as before provided. If the parties, plaintiffs or defendants, contestant, contestee, be residents of the county or of an unorganized part of the Territory attached to the county for judicial purposes, the clerk of the district court, or the judge of the county or probate court, if the matter be in his court, shall issue notice to the parties, stating that the notice or commission has been received, and stating the time when, and the place where the court will proceed to take the depositions. If the case be in the distrtct court, or before the commissioner of depositions, the clerk of the court shall issue subpœnas for witnesses, commanding them to appear before the court or commissioner and submit to an examination at the time and place and in the matter named. If the notice or commission be to the judge of the county or probate court, he shall issue the subpœnas and cause them to be served.

Subpœnas.

(1672) § **4.** Subpœnas shall be in the form used in civil cases, and served in the same manner.

Distance; mileage; fees.

(1673) § **5.** No witnesses shall be compelled to attend at a greater distance than one hundred miles, computing distance by the usually travelled route, nor unless his mileage at ten cents per mile one way and each day's attendance at two dollars per

day is tendered to him daily in advance, when demanded by such witness at the time he is served with the subpœna.

Witness, contempt.

(1674) § **6.** When subpœnaed, and mileage and fees are tendered, as in the last section provided, if the witness be well and able to travel, he or she shall be bound to appear before the district court or commissioner thereof, or before the county or probate court as the case may be, and testify fully in regard to the matter wherein the deposition is desired, and on failure so to do, shall be guilty of contempt, and, unless excused by the court or commissioner for good cause shown, shall be imprisoned in the county jail until he or she will appear and testify fully, and also be liable for all costs incurred in compelling his attendance. No excuse for disobedience to a subpœna, other than inability to travel to the court, shall be considered unless the party shall appear aud testify fully.

Notice, how served, testimony, when taken.

(1675) § **7.** In cases where notice is issued to a person, a resident of the county, such notice must be served on the party, or his attorney of record, in the district court or in the county or probate court, or of record in the matter in which the deposition is being taken at least five days before the examination of the witness is begun. This notice may be served in manner and form as summons are served for the commencement of an action in the district court. At the time so set, the party so notified may appear and show cause, if any he has, why such deposition should not be taken, and if it be shown that no such matter is pending, or that the matter sought to be elicited from the witness is privileged, then the testimony shall not be heard, if it be not so shown, then the court or commissioner of depositions, shall proceed to take the depositions, and for that purpose, is empowered to administer to such witness an oath as required by law, and shall then propound to them the written interrogatories accompanying the commission, and the witness may be orally examined and cross-examined as in cases triable before the court. There shall be no restraint as to examination, except that the matter sought to be drawn out is obviously irrelevant, or that the examination is being unreasonably protracted.

Resident witnesses, no notice.

(1676) § **8.** If the parties are none of them residents of the county where the depositions are to be taken and have not appeared in such action or procedure by attorney, then no notice need be issued by the court or commissioner, and the court or commissioner shall proceed to compel the attendance of the witness and take the depositions as in this act provided.

Continuances.

(1677) § **9.** Continuances to complete or take depositions, may be had under like circumstances as in cases on trial in the court, in case the witness be unable to appear before the court, or commissioner of depositions, the court or commissioner may adjourn to a place where the witness may be examined.

Depositions, certified to and forwarded.

(1678) § **10.** When depositions are to be taken, they shall be certified and sent to the court or land office or townsite commission where the matter is pending in which the evidence is taken or from which the commission issued.

Same, costs.

(1679) § **11.** The party taking depositions shall pay all the

costs thereof, which shall be the same as are allowed for similar services in courts of record. Chap. 22.

Same voluntary, before whom.

(1680) § **12**. Depositions may be taken before any clerk of the court, justice of the peace, or notary public, when the witness appear and testify voluntarily, but such officers shall not compel the attendance of witnesses or punish for contempt.

This act shall be in force from and after its passage and approval.

CHAPTER XXII.—COUNTY SEATS.

AN ACT providing the manner and means of locating and re-locating county seats.

[Took effect December 25, 1890.]

SECTION.
1. County commissioners petitioned.
2. Petition; county lines, time.
3. Voters in county.
4. Petitioners tested, number necessary.
5. Order for election.
6. Ballots; second election.
7. Fraud prevented.
8. Election officer's duties; canvass.
9. County seat removed.
10. Removal not enjoined.
11. Elections legally tested.
12. Trial, method, result.
13. Frequency of removal.
14. Commissioners refuse to act.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

County commissioner's petitioned.

(1681) § **1**. It shall be lawful for any voters within the Territory of Oklahoma to petition the board of county commissioners of their county to call an election whereby to determine the location or change of location of the county seat of their county as herein provided, and said petitioners shall give the number of township, range and quarter section on which they reside.

Petition; county lines, times.

(1682) § **2**. If at any call, or special or regular session of the county commissioners, there are presented to them petitions, asking that the question of locating or changing the location of the county seat be submitted to the voters thereof, and signed by six tenth of the legal voters of the county, the commissioners shall make the order as hereinafter provided; *Provided*, That in any county the boundaries shall be fixed at this session of the Legislative Assembly and which shall include therein any territory which has not been settled, or opened to settlement by the United States, no election for changing the county seat shall be held until six months after all the lands in such county, except school lands, shall have been opened up for settlement.

Voters in county.

(1683) § **3**. When the petitions are so presented, the county commissioners shall determine from the poll books of the election last held in their county, the number of voters in the county, if the poll book be lost or destroyed, then by the record in the county clerk's office showing such vote.

Petitioners tested, number necessary.

(1684) § **4**. For the purpose of enabling the county commissioners to determine whether or not the persons' names signed to the petitions are legal voters in the couny, the petition presented to them shall, each one, contain the names of resident legal voters in one congressional township only, and shall be verified by the affidavit of one or more resident voters of that township or town, to the effect that they know the signers thereof, to be each

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and all them resident voters of that township, or that they know parts of them so to be, naming the ones so known to them. Different persons, resident voters of the township, may swear that different persons who have signed the petition, naming them, are resident voters of the township and the names so sworn to on the various petitions presented from the several townships shall be added together. and if the total number so signing and sworn to are equal to three-fifths of the number of legal voters in the county as shown by the poll-books or records in the clerk's office, it shall be sufficient evidence to the county board and they shall be bound to make the order submitting the question.

Order for election.

(1685) § **5.** The order for the election shall plainly state that the proposition to locate the county seat shall be submitted to the voters of the county at the next general election, or at a special election called for that purpose. If the petitioners prayed for a special election, it shall be granted: *Provided, however*, If there be not more than sixty days between the time of the making of the order and the date fixed for any general election, the vote shall be had at that general election. If the question be submitted at a special election, at least twenty days notice of the time and places for holding the election shall be given by publication as in other elections.

Ballots; second election.

(1686) § **6.** At the election there shall be written or printed on the ballots to be voted in that county, the words "For county seat," naming the town desired to be voted, as the voter may wish to vote, and if a majority of the votes cast at the first election be for any one point named, then that shall be the county seat of that county, and within ninety days after the day of election, the offices, furniture, books and records of the county shall be removed to the point so chosen, and the county seat there established. If, however, at such election no one town in the county receive a majority of all the votes cast, the county commissioners shall, when the election returns are canvassed, be bound to call another election within the county, to determine the location of the county seat at such election, and shall at such election give notice for twenty days before the time of voting, as before provided, and shall state the names of the two towns receiving the greatest number of votes at the last election, and at such second election the voters shall cast their ballot for one or the other of the two towns so named, and the town receiving the highest number of votes at the second election shall be the point chosen as the county seat, and the county seat shall be there established within ninety days after the vote is canvassed.

Fraud prevented.

(1687) § **7.** For the purpose of preventing the perpetration of frauds in such election, the person favorable to the points to be voted for, shall have the right to designate two persons to sit with the judges at the polling places in the county, from the time the polls are opened for that election until the ballots are counted and the poll-book completed and sealed, and shall have the right to interrogate voters under oath as to their residence and right to vote and to make and keep a list of the voters who voted at the

election, copies of all the tally sheets, if so desired, and it shall be the duty of the judges and the clerks of election to certify such copies as being correct and deliver them to the parties so designated to be present, and in all controversies or litigation arising with relation thereto, these copies shall be evidence equal with the originals. The persons in the county opposed to the choice of the place named as a county seat, shall in like manner and with like power and rights, have the right to have persons present at the various polling places.

Election officer's duties; canvass.

(1688) § **8.** It shall be the duty of the various officers holding the elections in the various precincts of the county, to open the polls, receive the votes, canvass and make returns of the results of the election, in the same manner as provided by law for so doing in general elections, and the board of county commissioners shall meet and canvass the vote returned, and declare the result as in other elections, and all officers shall perform their duties in like manner as provided by law shall be done in other elections.

County seat removed.

(1689) § **9.** If on such canvass the majority of the votes be for any one place as the county seat, it shall be the duty of the board of county commissioners to at once so declare and make a record thereof, and order the county seat to be established at the point so chosen.

Removal not enjoined.

(1690) § **10.** If the majority of the votes so cast be in favor of any point for the county seat of that county, then the removal thereof shall not be enjoined in any court or in any manner interfered with, but it shall take place within the time named.

Election legally tested.

(1691) § **11.** If any legal voter in the county desires to test the legality of the election so held, and the removal of or the right to retain the county seat at the point to which it may have been so voted and established, they shall have the right so to do by proper proceeding in court, but such proceedings, shall in no manner interfere with the removal or location of the county seat. If it finally be decided that such was wrongful, then the county seat shall be returned to the place from whence it was removed.

Trial, method, result.

(1692) § **12.** In all such trials the court shall disregard all informalities in the petition or order calling the election, and shall investigate the question as to whether or not the majority of the votes cast at the election were without fraud. If it be made to appear on the trial that the majority of the votes honestly cast within the county, were not for the point named, as the county seat, then the court shall order the county seat returned as before provided, if a removal has been had-

Frequency of removal.

(1693) § **13.** The question of the location of the county seat or the removal thereof, when so determined by a first or second election as before provided, shall not again be voted upon within that county for a period of five years, unless the board of county commissioners be petitioned to resubmit the question by not less than three-fourths of the voters of the county in question in manner as before provided for presenting petitions.

Commissioners refuse to act.

(1694) § **14.** If the county commissioners refuse in any way to act in any matter as they are in this act directed to do, or shall

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This act shall be in force from and after the date of its passage and approval.

CHAPTER XXIII.—CONVEYANCES.

AN ACT regulating conveyances of real property.

[Took effect December. 25 1890]

SECTION.

1. Realty, holding, transfers.
2. Form of deeds.
3. Grantor's covenants.
4. Title in fee subsequently acquired. how passed.
5. Deed, quit claim, effect of.
6. Mortgage, form of.
7. Same, effect of.
8. Notice to defend warranty.
9. Power of attorney, to convey real estate.
10. Form of acknowledgment,
11. Who may acknowledge instruments.
12. Powers of attorney, how acknowledged.
13. Conveyances, where recorded.
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16. Commissioner to convey real estate.
17. Private corporation may convey, how.
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19. Sheriff's deed.
20. Conveyances void when.
21. Instruments void, when.
22. Married person may convey under certain conditions.
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24. Certified copy of will may be recorded, effect of.
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26. Certified copies of record, evidence.
27. Fees of county clerk.
28. Satisfaction of mortgage.
29. Clerk to leave space for satisfaction.
30. Estate in joint tenancy.
31. Estate in fee tail,
32. Estate in fee simple.
33. Remainder.
34. Possession.
35. Conveyances of commissioner, sheriff and other officer.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Realty, holding, transfer.

(1695) § **1.** All persons twenty-one years of age or over, or bodies politic or corporate, to the extent authorized by law shall be entitled to hold real estate and to convey the same by deed; but no conveyance of real estate or interest therein, for the term of more than one year, shall be valid unless declared by an instrument in writing subscribed and delivered to the party disposing of the same, or by his agent thereunto authorized by writing.

Form of deeds.

(1696) § **2.** Deeds of conveyance of real property, shall be substantially in the following form;

Know all men by these presents, that I (or we)————, for and in consideration of.....dollars, in hand paid, do

hereby sell and convey to.....the following real property situated in.....county, Territory of Oklahoma, to-wit:.....
.....
.....
with all its appurtenances, and warrant the title to the same.
.....
Signed and delivered this.....day of.....18....
.....
.....

Grantor's covenants.

(1697) § **3.** Every deed in substance in the above form, when otherwise properly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs or assigns, with covenants on the part of the grantor, as follows:

First. That at the time of making and delivery of such deed, he was legally seized of the indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same.

Second. That the same were then free from all incumbrances and that he warrants to the grantee, his heirs and assigns, a quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and covenants shall be obligatory upon any grantor, his heirs and personal representatives, as full and with like effect as if written at length in such deeds.

Title in fee subsequently required, how passed.

(1698) § **4.** Where a grantor by the terms of his deed undertakes to convey to the grantee an indefeasible estate in fee simple absolute, and shall not at the time of such conveyance have the legal title to the estate sought to be be conveyed, but shall afterwards acquire it, the legal estate subsequently acquired by him shall immediately pass to the grantee, and such conveyance shall be as effective as though such legal estate had been in the grantor at the time of the conveyance.

Deed, quit-claim, effect of.

(1699) § **5.** A deed executed according to the form in section 2, of this act, with the words "quit claim" substituted for "convey" and the words "warrant the title to the same," omitted therefrom, shall be a deed of quit claim and shall have the effect to convey to the grantee all interest the grantor then held in the land, but the grantee shall hold the land conveyed subject to all outstanding rights or equities thereto, then existing in the hands of others.

Mortgage, form of.

(1700) § **6.** Know all men by these presents, that I,..... hereby mortgage to..... to secure the payment of.....dollars due as follows:.....
.....
the following described real property situated in..... County, Territory of Oklahoma, to-wit:
.....
with all the appurtenances, and warrant the title to the same.
Signed and delivered this.....day of.....18....
.....
.....

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Same, effect of.

(1701) § **7.** Every mortgage in substance in the above form, provided in the preceding section, when otherwise properly executed, shall be deemed and held a good and sufficient mortgage in fee simple to secure the payment of the money therein specified, and if the same contain the words "and warrant the title to the same," it shall be construed the same as if full covenants of seizure, good right to convey against incumbrances of quiet enjoyment, and general warranty, as expressed in section 3, were fully written therein, or if the words "and warrant the title to the same" are omitted, no such covenant shall be implied.

Notice to defend warranty.

(1702) § **8.** In all cases where there is a recovery of the land or any interest therein, adverse to any warranty deed thereto, the judgment by which such recovery is had shall be effective only against previous grantors who are parties thereto, or who had thirty days notice in writing of the pendency of such action previous to the trial thereof. Any grantee holding an interest in realty, adverse to the plaintiff, may cause notice of the pendency of such action to be served on any grantor who has made a warranty deed to the realty, the conveyance of which would be broken if there be a recovery in the action and demanding that he appear and defend the same, and if after thirty days notice thereof, such grantor fails to appear and defend, if there be a recovery in that action, each warrantor so notified who fails to appear and defend shall be found by the judgment rendered and shall be liable to the property granted under him for the purchase price of the land by him received, together with ten per cent annual interest thereon, and for a reasonable attorney's fee, and for all costs incurred in defending the action: *Provided, however,* That any warrantor not so notified, shall not thereby be released from his covenants, but may be liable therein in a separate action.

Power of attorney to convey real estate.

(1703) § **9.** The power of attorney in fact, for the conveyance of real estate, shall be executed and acknowledged in manner and form as required for the acknowledgment of other conveyances of real estate, shall be recorded in the same office: *Provided, however,* That no deed executed by virtue of such power of attorney, shall be received for record unless the power of attorney under which it is executed is or has been filed for record in the same office.

Form of acknowledgment.

(1704) § **10.** Acknowledgments of all instruments affecting real estate shall be in the following form:

TERRITORY OF OKLAHOMA, } S.S.
COUNTY OF ..... }

.....Before me, ...
.....a.....in
and for the above named county and Territory, on this.....
day of.....18...., personally appeared.....
and.....to me known (or proven) to be
husband and wife, and executed the above conveyance of lands to
me known (or proven) to be the homestead (or known to me (or

proven) not to be the homestead of) of the grantors and each for themselves acknowledge the execution thereof to be their free and voluntary act for the purposes named.

. . . . . .

. . . . . .

Witness my hand and official seal the date above written, Any deed or acknowledgment affecting the title to real estate, acknowledged substantially in accordance with the above form before the proper officer, shall be *prima facie* evidence of the proper execution thereof: *Provided*, If any one signs the instrument acknowledged by mark, the officer taking the acknowledgment shall in addition to the above form, also certify that he read the instrument over to the party, so signing by mark, and explained the contents thereof fully to him, or her, and that after such explanation, he, or she, acknowledged it: *Provided further*, The notary shall certify as follows: The grantor is known (or proven) to me to be single and unmarried, or that the parties are known (or proven) to me to be husband and wife, and the land conveyed is known (or proven) to me to not be the homestead of the grantor (as the case may be).

Who may acknowledge instruments.

(1705) § **11.** All instruments in writing conveying real estate or affecting title thereto, may be acknowledged before the following officers:

First. When executed within this Territory before any judge of the Supreme or district courts; before any clerk of the Supreme or district court, or the deputy of such clerk; before a county or probate judge of any county; before any county clerk or the deputy of such clerk, such judges or clerks, severally certifyiug sueh such acknowledgement, under the seal of such court or counties, respectively, before any notary public, he certifying the same, under his notarial seal, or before any justice of the peace, if the land conveyed by such conveyance or instrument be within the county wherein such justice resides: *Provided*, That such justice may take the acknowledgement to the deed, or instrument, affecting the title to land situated beyond his county, if there shall be affixed to his certificate of such acknowledgement a certificate of the clerk of the proper county, under his hand and the seal of such county, certifying to the official capacity of such justice of the peace, and that the signature of such certificate of acknowledgement is the genuine signature of such justice.

Second. When executed out of this Territory and within the Uuited States, or any territory thereof, before any commissioner of deeds appointed by the Governof of the Territory, of such state or territory, or of the United States within such state or territory, having a seal, such clerk certifying the acknowledgment under the seal of such court; or before a notary public of such state or territory, he certifyfng the same under his notarial seal or before auy other officer authorized by the laws of any such state or territory, to take and certify such acknowledgment: *Provided*, That such officer have an official seal of his office and attach the same to his certificate of such acknowledgment.

Third. When executed out of the United States, before any

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court of record of any foreign republic, kingdom, empire, state, principality or province having a seal, the acknowledgment belng certified by the judge or justice of such court, to have been made before such court, and such certificate to be attested by the seal of such court. or before the mayor or other chief officer of any city or town having a seal, and such mayor or other officer certifying the same under such seal, or before any consul of the United States, within such foreign country, he certifying the same under the seal of his consulate.

Powers of attorney, how acknowledged.

(1706) § **12.** Powers of attorney for the conveying, leasing or releasing of any lands, or any interest therein, may be acknowledged or proven in the same manner as deeds of conveyances.

Conveyances, where recorded.

(1707) § **13.** All deeds, conveyances or agreements in writing affecting title to real estate, interests therein, and powers of attorney for the conveyance of real estate or interest therein, only [duly] acknowledged or proven, may be recorded in the office of the county clerk, or the recorder of deeds, if the office of the recorder of deeds is separate fiom that of the county clerk, wherein such real estate is situated, and from and after the filing thereof, for record in such office and not before, such deeds, conveyances and agreements shall take effect as to consequent *bona fide* purchasers, and incumbrances by mortgages, judgment or otherwise.

May be read in evidence, where.

(1708) § **14.** All deeds, agreements, writings and powers of attorney, acknowledged and authorized to be acknowledged or proven in accordance with this act may be read in evidence in all courts within this Territory, without additional proof of the execution thereof, and the record of such deed, agreement, writing or power of attorney where the same appears by such record to be properly acknowledged, attested, or proved in accordance with the laws of this Territory, or a transcript from any such record, certified by the clerk or recorder of the proper county where such deed, agreement, writings, or power of attorney, ought to be of record, may upon affidavit or proof of the party desiring to use the same that the original thereof is not in his possession or power to produce, be read in evidence with like effect as the original of such deed, or acknowledgement properly acknowledged, attested or proven as aforesaid.

Deeds and other instrument in foreign languages.

(1709) § **15.** Deeds, bonds, agreements in writing, and power of attorney for the conveyance of lands or any interest therein, executed in any foreign country, and the acknowledgment or proof of the execution thereof, may be executed, heard, taken and certified in the language of such foreign country, and the translation thereof in the English language and thereto attached, by any person learned in the language of such foreign country and by such person sworn to be a true and correct translation thereof, before any officer or court authorized to take an acknowledgment of deeds, shall entitle such deed, bond, agreement or power of attorney and the certificate of acknowledgment or proof thereof, to be read in evidence, and recorded with like effect as if written in the English language, but such translation shall not be conclusive upon any party desiring to question the correctness thereof. No

such deed or other writing shall be entitled to record unless accompanied by such sworn translation. Chap. 23.

Commissioners to convey real estate.

(1710) § **16**. The board of county commissioners of any county, or the trustees or council of any city, or the board of trustees of any town, may by order to be entered on record among the proceedings of such board, or council, appoint a commissioner, to sell and convey any real estate belonging to any such county, city, or town, and to affix to any conveyance thereof, the seal of such county, city, or town; and such conveyance executed in accordance with such order, and acknowledged as herein before provided, shall have the effect to transfer to the grantee named, all the interest of such county, city, or town in the real estate so conveyed.

Private corporations may convey, how.

(1711) § **17.** Private corporations authorized by law, to convey their real estate, may convey the same in the manner authorized in this act, or by deed under their common seal subscribed and acknowledged by their president or other head officer.

Corporations may convey by attorney.

(1712) § **18**. Such private corporations, domestic or foreign, may by writing executed in the manner provided for the conveyance of real estate, by corporations, agents, attorneys in fact to convey real estate and all conveyances executed by such attorneys in fact, in the name of the corporation, shall pass the legal title of such corporation to the real estate thereby conveyed, as effectually as if conveyance had been executed by the corporation in the manner provided by law for the conveyance of real estate by corporation. And it shall not be necessary to affix the seal of the corporation to conveyance so executed by such authority in fact.

Sheriff's deed.

(1713) § **19**. Deeds executed by any sheriff or other officer, for real estate sold under execution, or pursuant to the decree or order of any court, shall be acknowledged or proved, and admitted to record in like manner and with like effect as other deeds.

Conveyances void, when.

(1714) § **20.** All instruments conveying or affecting the title to the homestead exempted by law to the head of a family, shall be void unless the husband and wife sign and acknowledge one and the same joint instrument conveying the same.

Instruments void, when.

(1715) § **21**. All instruments, other than leases for a period of one year, affecting the title of realty occupied as the homestead of a family shall be void unless the husband and wife join in the execution and acknowledge the instrument conveying the same.

Married persons may convey under certain conditions.

(1716) § **22**. Married persons may convey real estate other than the homestead without the concurrence of the husband or wife, as the case may be, but the title thereby conveyed, shall be subject to the inchoate right of inheritance, held by the husband or wife, not joining in the deed, if he or she survive the one executing the deed: *Provided*, That where the wife or husband do so join, he, or she, shall be deemed to have conveyed his, or her, right of inheritance only, and not to have joined in the covenant of warrants.

Land, real estate and deed defined.

(1717) § **23**. The terms "land" and "real estate," as used in this act, shall be construed as co-extensive in the meaning with

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the terms "land," tenants and hereditaments. The term "deed" as used in this act, includes mortgages, leases, and re-leases. and other conveyances and incumbrances purporting to affect the interest in or title to real estate.

Certified copy of will may be recorded, effect of.

(1718) § **24.** A certified copy of any will in writing for the devisee of real estate in this Territory, that shall have been executed heretofore, or shall be executed hereafter, together with a certified copy of the probate thereof, may be recorded in the office of the chief [county] clerk or recorder of deeds in each and every county wherein any of such real estate so devised may be situated, and all other decrees in probate in such probate courts, determining the descent of real estate, may in like manner be recorded. In case any decree or order, or certified copy or otherwise of any appellate court, shall be filed in any such probate court for the government thereof, in the premises, a copy of the same shall be attached to any such will, and probate thereof; or to such decree, as the case may be, and certified with the other papers to be recorded as aforesaid, and thereafter the devisee therein named shall be deemed the owner of such real estate for all purposes including that of assessment and taxation.

Clerk to furnish copy.

(1719) § **25.** The clerk of any court, upon demand, shall furnish to any party in interest, copies of any such papers and records, properly attested and certified by him under the seal to the court, and the same shall thereupon be admitted to record accordingly.

Certified copies of record, evidence.

(1720) § **26.** Such records of any such certified will and probate thereof, and of any such decree, and of said accompanying papers and records in relation to any such will or decree, shall be received in all courts of the Territory as evidence of the title to any real estate so devised by will or determined by decrees, to the same extent as the record of deeds to real estate in such office.

Fees of county clerk

(1721) § **27.** Any such county clerk shall be entitled to the same fee as in other cases of certification of copies of records in his office, and any such recorder shall be entitled to the same fee as in cases of deeds to real estate.

Satisfaction of mortgage.

(1722) § **28.** That when the mortgagee of any property within this Territory, shall receive payment of the money due to him, he shall enter saisfaction thereof on the margin of the record where such mortgage is recorded, and such satisfaction so entered, shall operate and be taken to release the said mortgage to whoever may be entitled to the release, and shall convey the title of the property described in such mortgage recorded to whomsoever may be entitled to receive the same as a released deed, executed under the formalities regulating conveyances would have done.

Clerks to leave space for satisfaction.

(1723) § **29.** That the clerk and recorder of each county, when recording a mortgage, shall leave space on the margin of the record for the entry of satisfaction, and by the direction of the mortgagee shall record therein the satisfaction made on said mortgage, or permit the mortgagee to enter therein the satisfaction of said mortgage, which record shall have the same force and effect as the record of a released deed of said mortgage.

Estate in joint tenancy.

(1724) § **30.** No estate in joint tenancy, in any lands, tene-

ments or hereditaments, shall be held or claimed under any grant, devise or conveyance whatsoever, unless the premises therein mentioned shall be therein so expressly declared to pass, except in case of executors and trustees. And every estate in lands, tenements or hereditaments held by two or more, other than executors or trustees, shall be deemed to be tenancy in common, unless otherwise expressly declared.

Estates in fee tail.

(1725) § **31.** In case where by common law any person may become seized in fee tail of any lands, tenements or hereditaments by any means, whatsoever, such person, instead of becoming seized in fee tail thereof, shall be seized of such lands, tenements or hereditaments, for his or her natural life only. And the remainder shall pass in fee simple absolute to the person or persons to whom the estate would first pass on the death of such first grantee, devisee or donee, according to the law of descent of this Territory, by virtue of such devise or conveyance.

Estate in fee simple.

(1726) § **32.** Every estate in land which shall be granted, conveyed or devised to one shall be deemed a fee simple estate of inheritance, unless limited by express words.

Remainder.

(1727) § **33.** When any estate shall be by any conveyance limited in remainder to the child or children of any person to be begotten, such child or children born after the decease of his or her parent shall take the estate in the same manner as if born in the life time of the parent, though no estate shall have been conveyed to support the contingent remainder after his death.

Possession.

(1728) § **34.** All conveyances of real estate and interest therein, duly executed and delivered, shall be held to carry with them the right to immediate possession of the premises or interest conveyed, unless otherwise specified.

Conveyances of commissioner, sheriff or other officer.

(1729) § **35.** Every conveyance of real estate by a commissioner, sheriff or other officer legally authorized to sell, under, or by virtue of a decree or judgment of any court within this Territory, shall be good and effectual to pass the absolute title to such real estate to the purchaser thereof, but nothing herein shall be construed to affect the rights, title or interest of any person or persons other than the parties to such conveyance, decree or judgment, and those claiming under them.

Estate of inheritance.

(1730) § **36.** An estate of freehold or inheritance may be made to commence in the future by deed or conveyance, in like manner as by will.

This act shall be in force and effect on and after the adjournment of the present session of the Legislative Assembly.

CHAPTER XXIV.—COUNTIES AND COUNTY OFFICERS.

ARTICLE.
1. County surveyor.
2. County treasurer.
3. Sheriff.
4. County attorney.
5. County clerk.
6. County commissioners.

ARTICLE 1.—COUNTY SURVEYOR.

SECTION.
1. County surveyor's duties.
2. Same.
3. Re-survey and sub-division.
4. Boundary in dispute.
5. Field notes.
6. Retracing lines; evidences of original survey.
7. Who to pay assistants.

AN ACT prescribing the duties of county surveyor.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

County surveyor's duties.

(1731) § **1.** The county surveyor shall make in a good and professional manner all surveys of land within his county which he may be called upon by the owner thereof, or his representative, or directed by the district or probate courts, or the board of county commissioners, to make; and also all lands, tracts or lots owned by the county, and public roads when so directed by said board, and his surveys shall be held as presumptively correct.

Same.

(1732) § **2.** He shall transcribe the field notes and plats of such surveys into convenient and substantial record books to be furnished by the county, when the board of county commissioners shall deem it advisable, and said records shall be entered in an orderly manner, easy of reference, and shall be delivered to his successor in office, they may be kept in the office of the county clerk, and said record shall be competent evidence in all courts of the facts therein set forth.

Re-survey and sub-division.

(1733) § **3.** The re-survey and sub-divisions of lands by all surveyors shall be according to the laws of the United States, and the instructions issued by the officers thereof in charge of the public land surveys, in all respects; and in the sub-divisions of fractional sections, bounded on any side by a meandered lake or river, or the boundary of any reservation or irregular survey, the subdivision lines running toward and closing upon the same shall be run at courses in all points intermediate and equidistant, as near as may be, between the like section lines established by the original survey.

Boundary in dispute.

(1734) § **4.** Whenever the survey made is of lines and monuments in dispute between parties, or by order of the district or probate courts, the chainmen must be of disinterested persons, approved and sworn by the surveyor, to measure justly and impartially to the best of their skill and ability.

(1735) § **5.** The record of the field notes and the plats shall show distinctly of what piece of land it is a survey, at whose request it was made, what owners were notified and present at the date of survey, the names of the chainmen, and that they were approved and sworn to by the surveyor when so required by law. The courses shall be taken according to the true meridian, and the variations of the magnetic needle therefrom shall be noted, and also when any material change therein shall occur.

Field notes.

(1736) § **6.** In retracing lines or making any survey, he shall take care to observe and follow the boundaries and monuments as run and marked by the original survey, but shall not give weight to partial and doubtful evidences or appearances of monuments, the recognition of which shall require the presumption of marked errors in the original survey, and he shall note an exact description of such apparent monuments.

Retracing lines; evidence of original survey.

(1737) § **7.** All necessary chainmen and other assistants must be paid for their services by the person for whom the survey is made, unless otherwise specially agreed.

Who to pay assistants.

This act shall take effect and be in force from and after the date of the adjournment of this session of the Legislative Assembly.

ARTICLE 2.—COUNTY TREASURER.

SECTION.
1. Receive and pay out money.
2. Collector of taxes, general duties.
3 Settlement with county commissioners.
4. May insure county buildings.
5. Treasurer to certify to abstract.
6. Oath; bond.
7. Not eligible to third term.

AN ACT prescribing the duties of county treasurer.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

(1738) § **1.** It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived, and other moneys which by law are directed to be paid by him: and all moneys received by him for the use of the county shall be paid by him only on the warrant of the board of county commissioners drawn according to law, and all other moneys shall be paid over by him as provided by law.

Receive and pay out money.

(1739) § **2.** He shall be the collector of taxes, and, shall keep his office at the county seat. He shall be charged with the amount of all tax lists in his hands for collection, and credited with the amount collected thereon, and the delinquent list, and shall keep a fair and accurate current account of the moneys by him received showing the amount thereof, the time when, from whom, and on what account, received, in cash, warrants, county or road orders; and if in warrants or orders, their kind, number or other designation, amounts for which they were drawn, interest due thereon, and the amounts of the receipts thereon endorsed, if any; also of all disbursements by him made, showing the time when, to whom, on what account, and the amounts paid; and he shall so arrange his

Collector of taxes. general duties.

books that the amounts received and paid on account of each separate and distinct fund or appropriation shall be exhibited in separate and distinct columns or accounts, and so as to show whether the same was received or paid in cash, or warrants or orders, and if either of the latter, their designation and other particulars as above required; and the county treasurer shall at all times exhibit such accounts when desired, to the Territorial, county or school officers entitled to examine the same and shall at any time pay over the balance in his hands to them, upon receiving proper vouchers.

Settlement with county commissioners.

(1740) § **3.** The books, accounts, and vouchers of the county treasurer, and all moneys, warrants or orders remaining in the treasury, shall at all times be subject to the inspection and examination of the board of county commissioners, and at the regular meetings of the board in January and July of each year, and at such other times as they may direct, he shall settle with them his accounts as treasurer, and for that purpose he shall exhibit to them all his books, accounts and moneys, and all vouchers relating to the same, to be audited and allowed, which vouchers shall be retained by them for evidence of his settlement; and if found correct the accounts shall be so certified; if not he shall be liable on his bond.

May insure county buildings

(1741) § **4.** When directed by the board of county commissioners he shall cause to be insured at the charge of the county, any or all of the public buildings and property belonging to the same, in the name of himself as treasurer and successors in office, or otherwise as said board may direct; and in case of the destruction or damage of the buildings or property so insured such treasurer shall demand and receive the moneys due on account of such insurance, and pay the same into the county treasury, and such money shall be applied to the fund for rebuilding or restoring such buildings or property under the direction of the county commissioners.

Treasurer to certify to abstract.

(1742) § **5.** It is hereby made the duty of each county treasurer of the county where the property is situated to attach his certificate to each and all abstracts of title to real estate that may be presented to him for that purpose, which certificate shall show the amount of due and unpaid taxes against, or tax title affecting the land described in such abstract, as the same shall appear from the records in his office; and for compensation therefor, he shall receive the sum of twenty-five cents for each abstract so certified and for each failure or refusal to comply with the provisions of this act he shall be liable to a fine not to exceed the sum of fifty dollars.

Oath, bond.

(1743 § **6.** The county treasurers shall before they enter upon the duties of their office take the usual oath of office and shall enter into a bond to be provided by their respective county commissioners in the sums as follows: In counties of ten thousand inhabitants or over, not less than seventy-five thousand dollars: In counties of under ten thousand and not less than five thousand inhabitants in the sum of fifty thousand dollars: In counties of five thousand inhabitants or less, not less than twenty-

five thousand dollars; the conditions of such bond shall be as follows in substance: *Whereas*, The above bounden..... was elected to the office of county treasurer of the county of..... on the.....day of....., *Now Therefore*, The condition of this obligation is such that if the said..... or his deputy or deputies and all persons employed in his office shall faithfully and promptly perform the duties of his office and if the said.....and his deputies shall pay according to law all moneys which shall come to his hand as treasurer and will render a just and true account thereof whenever required by said board of county commissioners or by any provision of law and shall deliver over to his successor in office or to any other person authorized by law to receive the same, all moneys, books, papers, and other things appertaining thereto, or belonging to said office then the above obligation to be void, otherwise to be in full force and effect. Said bond shall run to the Territory of Oklahoma, and action may be brought thereon in the name of the Territory for the use and benefit of person or persons injured by violation thereof. Chap. 24.

(1744) § **7.** No county treasurer shall hold his office for a longer period than two terms in succession. Not eligible to "third term."

This act shall take effect and be in force from and after the final adjournment of the first session of the Legislative Assembly.

ARTICLE 3—SHERIFF.

SECTION.
1. Election; bond.
2 Conditions of bond.
3. Vacancy; under sheriff.
4. Coroner as sheriff; county commissioner's duty.
5. Under sheriff, appointed with county commissioner's consent.
6. Appointments and revocations, when in writing.
7. Custody of jail.
8. Service of writs, etc.
9. Peace preserved; how.
10. New sheriff takes possession.
11. Writs un-executed; when returned.
12. Deputy's or jailor's misconduct after vacancy in sheriff's office.
13. Sheriff's administrators liable.
14. Writs, how served on sheriff.
15. Giving attorneys preference; list of attorneys.
16 Failure to make return.
17. Receiving unlawful fees.

AN ACT relating to the office of sheriff and defining the duties thereof.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

(1745) § **1.** A sheriff shall be elected in each organized county, for the term of two years, and until his successor is elected and qualified, and who shall, before he enters upon the duties of his office, execute to the Territory of Oklahoma, a bond with at least three sufficient sureties, in such penal sum not less than three thousand dollars nor more than twenty thousand dollars, as the board of county commissioners shall specify and approve; said bond when thus approved, to be filed in the office of the county clerk: *Provided*, That the sheriff elected at the first election for the election of county officers, shall hold his office until his suc- Election; bond.

cessor is elected at a general election in one thousand eight hundred and ninety-two, and qualified.

Conditions of bond.

(1746) § **2.** The conditions of such bond shall be in substance as follows: WHEREAS, the above bounden..... was elected to the office of sheriff of the county of..... on the.....day of.....; now the condition of this obligation is such that if the said.....shall well and faithfully perform and execute the office of sheriff of said county of.....during his continuance in office, by virtue of said election, without fraud, deceit, or oppression, and shall pay over all moneys that may come into his hands as such sheriff, and shall deliver to his successor all writs, papers and other things pertaining to his office, which may be so required by law, then the above obligation shall be void; otherwise to be and remain in full force and effect.

Vacancy, under-sheriff.

(1747) § **3.** The sheriff of each county may, as soon as may be, after entering upon the duties of his office, appoint some proper person under-sheriff of said county, who shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such under-sheriff, or he become incapable of executing the same, another shall in like manner be appointed in his place.

Coroner as sheriff

(1748) § **4.** Whenever a vacancy occurs in the office of sheriff of any county, the under-sheriff of said county, if there be one, if not, the coroner shall in all things execute the office of sheriff until a sheriff shall be appointed by the board of county commissioners, who shall hold his office until his successor is elected and qualified; and any default or misfeasance in office of such under-sheriff in the meantime, as well as before such vacancy, shall be deemed to be a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the condition of the bond executed by such under-sheriff to the sheriff by whom he was appointed.

Under-sheriffs and their duties.

(1749) § **5.** Each sheriff may appoint such number of under-sheriffs as the business of his office may require, but shall appoint only such persons as the board of county commissioners approve. For the official acts of his under-sheriff, he shall be responsible, and may revoke such appointments at his pleasure. He, or the under-sheriff, may in writing depute certain persons to do particular acts. The sheriff and his sureties shall be responsible on his official bond for the acts and omissions of his under-sheriff, and also for the acts and omissions of the persons deputed to do particular acts.

Appointments and revocations.

(1750) § **6.** Every appointment for an under-sheriff or of a deputy-sheriff, and every revocation of such appointments, shall be in writing, under the hand of the sheriff, and shall be filed in the office of the clerk of the county; but this section shall not extend to any person who may be deputized by any sheriff or under-sheriff to do any particular act only.

Custody of jail.

(1751) § **7.** The sheriff shall have the charge and custody of the jail of his county, and all the prisoners in the same, and shall

keep such jail himself, or by his deputy, or jailer for whose acts he and his sureties shall be liable.

Service of writs, etc.

(1752) § **8.** The sheriff, in person or by his under-sheriff or deputy, shall serve and execute according to law, all process, writs, precepts and orders issued or made by lawful authorities, and to him directed, and shall attend upon the several courts of record held in his county, and shall receive such fees for his services as are allowed by law.

Peace preserved, how.

(1753) § **9.** It shall be the duty of the sheriff, under-sheriffs and deputies, to keep and preserve the peace of their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections, for which purpose and for the service of process in civil and criminal cases, and in apprehending or securing any person for felony or breach of the peace, they and every constable may call to their aid such person or persons of their county as they may deem necessary.

New sheriff takes possession.

(1754) § **10.** Whenever a new sheriff shall be elected, and shall have been qualified as required by law, the former sheriff, upon demand, shall deliver to him the jail and other property of the county, and all prisoners in such jail, and all writs, processes, orders and other papers belonging to such office, and in his possession, or that of his under sheriff or deputies, except as provided in the next succeeding section; and upon delivery thereof, such new sheriff shall execute to the former sheriff his receipt therefor.

Writs unexecuted, when returned.

(1755) § **11.** Sheriffs, and under-sheriffs and deputies may execute and return all such writs and processes as shall be in their hands at the expiration of their office, or at the time of their removal from office, which they shall have begun to execute by service, levy or collection of money thereon.

Deputy's misconduct.

(1756) § **12.** Any default or misconduct in the office of deputy sheriff or jailor, after the death, resignation or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

Sheriff's administrators liable.

(1757) § **13.** Any action for default or misconduct of any sheriff, his under-sheriff, jailor, or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

Writs, how served on sheriff.

(1758) § **14.** Every paper required by law to be served on the sheriff, may be served on him in person, or left at his office during his business hours.

Giving attorney prefere nce.

(1759) § **15.** No sheriff, under-sheriff, deputy-sheriff, or person by either of them deputed to do any special act, shall, directly or indirectly, by himself or through others in any way suggest or indicate to, or advise any person having any proceeding or about to have any proceeding in any court, or other matter, that any attorney or firm of attorneys are desirable, or successful practitioners, or in any way do any act liable to influence or direct such person in his, her, or their choice of attorneys. Nor shall any such sheriff, under-sheriff, or deputy-sheriff, appear, or advise as attorney or counsellor in the case, or in any court. Any sheriff, under-sheriff. deputy-sheriff or person so specially deputed, who shall violate any one of the provisions of this section shall be

Chap. 24.

deemed guilty of a misdemeanor, and for the first offense shall be fined ten dollars, aud on the second conviction shall be fined not less than twenty-five dollars. And for the third offense, he shall be removed from office. The sheriff shall keep posted in each cell of the jail a list of the attorneys practicing in his county.

Failure to make return.

(1760) § **16.** Whenever any sheriff shall neglect to make due return of any writ or process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both at the discretion of the court, subject to appeal; such fine, however not to exceed two hundred dollars; and also an action for damages to the party so aggrieved.

Receiving unlawful fees.

(1761) § **17.** No sheriff shall, directly or indirectly, ask, demand or receive for any service to be by him performed in the discharge of any of his official duties any greater fees than are allowed by law, on pain of forfeiting treble damages to the party aggrieved, and in being fined in a sum not less than twenty-five dollars, nor more than two thousand dollars.

This act shall take effect and be in force from and after the date af the final adjournment of the Legislature.

ARTICLE 4.—COUNTY ATTORNEY.

SECTION.
1. Election, duties, qualifications.
2. Residence,
3. Vacancy, how filled.
4. Duties in court.
5. Same.
6. Advice to officers.
7. Salary based on population.
8. To receive what fees, when not to be interested as attorney.
9. Absence.
10. Receipts for money.
11. Annual verified account to be filed with the county treasurer.
12. Refusal to pay over money, fine; action on bond.
13. Grand jury duty.
14. Deputy.

AN ACT creating the office of county attorney and defining the duties of such officer, and making provisions for the compensation of same.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly, of the Territory of Oklahoma.

County attorney.

(1762) § **1.** A county attorney shall be elected in each county in this Territory organized for judicial purposes, at the first election for the election of county officers after the passage of this act, and at every biennial election thereafter, who shall hold his office for the term of two years and until his successor shall be elected and qualified; and shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by law, and shall execute a bond to his county in the penal sum of one thousand dollars, with two or more sureties to be approved by the county clerk of such county, which bond shall be conditioned for the faithful performance of his duties as such county attorney, and that he will pay over to the treasurer of his county, in the manner prescribed by law, all moneys which come to his hand by virtue of his office, and shall deposit such oath and bond in the county clerk's office: *Provided*, That no person shall be eligible to the office of county

attorney who is not duly admitted to practice as an attorney in some court of record in this Territory.

Residence.

(1763) § **2**. The county attorney shall be a resident of the county in which he is elected or appointed.

Vacancy.

(1764) § **3**. In case of a vacancy in the office of county attorney from any cause, the board of county commissioners of the county where such vacancy occurs, shall appoint a county attorney to fill such office until the next general election, who shall qualify under the provisions of this act.

Duties in court.

(1765) § **4**. It shall be the duty of the county attorney of the several counties to appear in the district courts of their respective counties and prosecute and defend, on behalf of the Territory, or his county, all actions or proceedings, civil or criminal, in which the Territory or county is interested or a party; and whenever the venue is changed in any criminal case, or in any civil action or proceeding in which his county of the Territory is interested or a party, it shall be the duty of the county attorney of the county where such indictment is found, or the county interested in such civil action or proceeding, to appear and prosecute such indictment, and to prosecute or defend such civil action or proceeding in the county to which the same may be changed.

Same.

(1766) § **5**. Each county attorney shall when requested by any magistrate of his connty, appear on behalf of the Territory, before any such magistrate, other than those exercising police jurisdiction of incorporated cities and villages, and prosecute all complaints made in behalf of the Territory, except for common assault and battery, of which such magistrate shall have jurisdiction.

Legal opinion to civil officers.

(1767) § **6**. The county attorney shall, without fee, give opinions and advice to the board of county commissioners and other civil officers of their respective counties, when requested by such board or officers, upon all matters in which the county is interested, or relating to the duties of such board or officers in which the Territory or county may have an interest.

Salary.

(1768) § **7**. The salary of the county attorney shall be fixed by the board of county commissioners at their January meeting in eighteen hundred and ninety-one, and at their July meeting in each even numbered year thereafter: *Provided*, That the salary of the county attorney shall not be changed during the term for which such officer was elected: *Provided further*, That in counties having a population of not more than five thousand inhabitants, the salary shall not exceed five hundred dollars. In counties having a population of over five thousand and not more than ten thousand inhabitants, the salary shall nct exceed seven hundred and fifty dollars. In counties having a population of over ten thousand and not more than twelve thousand five hundred inhabitants, the salary shall not exceed one thousand dollars. In counties having a population of over twelve thousand five hundred inhabitants the salary shall not exceed twelve hundred dollars. The population of the counties shall be determined by the last national or Territortorial census: *And provided further*, That the salary of the county attorney shall be paid quarterly.

Fees; prohibitions; additional office

(1769) § **8.** Said county attorneys shall not receive any fee or reward from or on behalf of any prosecutor or other individual for services or in any prosecution or business to which it shall be his official duty to attend, nor be concerned as attorney or counsel for either party other than for the Territory or county in any civil action depending on some state of facts upon which any criminal prosecution commenced but undetermined shall depend; nor shall any county attorney while in office be eligible to or hold any judicial office whatever, but if the county attorney of one county shall be requested to go to another county, or from one part to another part of his county to transact any business as county attorney, he shall be paid by his county the amount of his necessary expenses in transacting such business in addition to the salary.

Absence of.

(1770) § **9.** Each of the district courts, whenever there shall be no county attorney for the county, or when the county attorney shall be absent from the court, or unable to attend to his duties, may, if the court shall deem it necessary, appoint by an order to be entered in the minutes of the court, some suitable person to perform for the time being the duties required by law to be performed by the county attorney, and the person so appointed shall thereupon be vested with all the powers of such county attorney for that purpose.

Receipts for money.

(1771) § **10.** It shall be the duty of every county attorney whenever he shall receive any moneys for fines, recognizances, penalties or costs, to deliver to the officer or person paying the same, duplicate receipts, one of which shall be filed by such officer or person in the office of the county treasurer.

Annual verified account.

(1772) § **11.** Every county attorney shall on or before the first day of January in each year, file in the office of the county treasurer an account in writing, verified by his affidavit, to be filed with said account, of all moneys received by him during the preceding year by virtue of his office, or any fines, recognizances, forfeitures, penalties or costs; and he shall specify in such accounts the name of each person from whom he may have received such moneys, the particular amount paid by each person and the cause for which each payment was made. But he shall pay over to the county treasurer all money he may receive as such county attorney within ten days after he receives it.

Refusal to pay over money.

(1773) § **12.** Whenever such county [attorney] shall refuse or neglect to account for or pay over the moneys so received by him as required by the foregoing section, he shall be liable to a fine of not less than fifty dollars nor more than two hundred dollars; and it shall be the duty of the county treasurer, in his official name and capacity, to cause an action to be instituted upon the bond of such county attorney for the recovery of the moneys so received and unpaid by him.

Grand jury duty.

(1774) § **13.** Whenever required by the grand jury it shall be the duty of the county attorney of the county, to attend them for the purpose of examining witnesses in their presence or of giving them any advice in any legal manner, or to issue subpœnas and

other process to enforce the attendance of witnesses, and to draw up bills of indictments when found by such grand jury.

Deputy.

(1775) § **14.** The county attorney may appoint a deputy, or deputies, to perform the duties devolving on such county attorney, when so acting said deputy, or deputies, shall be entitled to receive the fees provided for under this act.

This act shall take effect and be in force from and after the final adjournment of the present session of the Legislative Assembly.

ARTICLE 5.—COUNTY CLERK.

SECTION.
1. Election; bonds, records.
2 Deputy, appointed by instrument of writing.
3. Vacancy, how filled.
4 Office, location of; duties.
5. Further duties.
6 Accounts allowed, record.
7. County orders, when clerk to attest. number, amount, etc.
8 Account against county.
9. New township; clerk's duty.
10. Road record.
11. Various accounts.
12. Same.
13. Accounts and items kept separately.
14. When clerk to assess property.
15. Countersign treasurer's receipts, when.
16 Annual report to auditor.
17. Draw orders on county treasurers.
18. Duty at close of treasurer's term.
19. Warrant, when cancelled.
20. List of county officers furnished secretary of state.
21. Office hours.

AN ACT in relation to the office of county clerk and defining duties thereof.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of thc Territory of Oklahoma.

Election; bond; records.

(1776) § **1.** A county clerk shall be elected in each county of this Territory for the term of two years, and he shall, before he enters upon the duties of his office, execute and file with the treasurer of the county, a bond with two or more sufficient sureties in penal snm of not less than five thousand dollars, to be fixed and approved by the board of county commissioners, with conditions in substance as follows, to-wit. "WHEREAS, The above bounden....., was elected to the office of county clerk of the county of ....., on the.....day of.....; now, therefore if the said..... shall faithfully perform all the duties of his office, and shall pay over all moneys that may come into his hands as such clerk, as required by law, and shall deliver to his successor in office all the books, records, papers and other things belonging to said office, then the above obligation shall be null and void; otherwise to remain in full force.

Deputy.

(1777) § **2.** Every such clerk shall, by instrument of writing, appoint a deputy and shall file such appoint in his office; and such deputy, in case of absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk during such absence or until such vacancy shall be filled. Every such clerk may appoint other deputies, and his sureties shall be responsible under his official bond for the acts of all such deputies. The county clerk or deputy county clerk shall in no case act as county treasurer or as his deputy,

Vacancy.

(1778) § **3.** If a vacancy in the office of county clerk should occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy, until a successor shall be elected according to law.

Office, duties.

(1779) § **4.** The county clerk shall keep his office at the county seat; shall attend the sessions of the board of county commissioners, either in person or by deputy; keep the seals, records and papers of the said board of commissioners, and shall sign the records of the proceedings of the board of county commissioners, and attest the same with the seal of the county.

Further duties.

(1780) § **5.** It shall be the general duty of the county clerk:

First. To record in a book to be provided for that purpose, all proceedings of the board.

Second. To make regular entries of their resolutions and decisions in all questions concerning the raising of money.

Third. To record the vote of each commissioner, on any question submitted to the board, if required by any member thereof.

Fourth. Attest all orders issued by the board, and signed by the chairman thereof, for the payment of money.

Fifth. To preserve and file all accounts acted upon by the board, with their action thereon, and he shall perform such special duties as are required of him by law.

Accounts allowed, record.

(1781) § **6.** It shall be the duty of such clerk to designate upon every account which shall be audited and allowed by the board, the amount so allowed, and he shall deliver to any person who may demand it, a certified copy of any record in his office, and any account on file therein on receiving from such person ten cents for every folio contained in such copy.

County orders

(1782) § **7.** Such clerk shall not attest any county order unless ordered by the board of commissioners authorizing the same and signed by the chairman; and every such order shall be numbered and the date, amount and number of the same and the name of the person to whom it is issued shall be entered in a book kept by him in his office for that purpose.

Account a gainst county.

(1783) § **8.** No account against the county shall be allowed unless presented within two years after the same accrued: *Provided*, That if any person having a claim against the county be, at the time the same accrues, under any legal disability, every such person shall be entitled to present the same within one year after such disability shall be removed.

New township.

(1784) § **9.** The clerk of each county shall, as often as a new township shall be organized in his county, or the boundaries of any township therein shall be altered, and immediately thereafter, make out and transmit to the Territorial Auditor a certified statement of the names and boundaries of the township so organized, and of the boundaries of any township the boundaries of which shall have been altered.

Road record.

(1785) § **10.** It shall be the duty of the county clerk to record in a proper book to be called the "road record" a record of all proceedings in regard to laying out and establishing, altering or vacating roads in the county which said record shall include

the report of the commissioners and surveyors locating altering or vacating such roads, and maps thereof, and such records, or duly certified copies thereof, are hereby declared *prima facie* evidence of the statements therein contained in the courts of this Territory.

Various accounts.

(1786) § **11**. The county clerk of each county of this Territory, shall keep a book in which he shall keep the receipts and expenditures of his county and all accounts of his county with the different county, township, districts and other officers.

Same.

(1787) § **12**. The county clerk in keeping the accounts of his county, with the county treasurer shall charge the county treasurer as follows: With the amount of taxes levied and assessed by the Territory and county, and each city, town, village, township school district or any other special tax levied for any purpose in his county, in each year; and the same shall be kept in separate accounts; with the amounts of any sinking funds in separate accounts; with the amount of money, and with the amount of Territorial, county, township, school, road and city warrants, or order or other evidences of indebtedness which the county treasurer may be authorized by law to receive from his predecessor in office; with the amount of the taxes on each tax roll made out and delivered to him during his term of office; with the amount of the additional assessments made after the tax roll is made out and delivered to the county treasurer, with the amount of the penalty added to the taxes after the first Monday of February of each year; with the amount paid by the county for advertising land and town lots for sale, for delinquent taxes, with the amount of redemption money on land and town lots sold to the county for delinquent taxes when the same are redeemed, with the amount of the Territorial school fund received from the Territorial Treasurer; with the amount received from the sale of property belonging to the county; with the amount received from the sale of estrays; with the amount received as fines and forfeitures; with the amount received from dram shops, tavern, grocery or other license. And upon presentation of proper vouchers shall credit him as follows: With the amount of all county, city, town, village, township, school district or other tax, which has been paid over to the proper authority and receipted therefor; with the amount of county orders received by the county treasurers and returned to the county board and cancelled; with the amount paid to the Territorial Treasurer, and township trustees, city treasurers; or other officers entitled by law to receive the same; with the amount of delinquent taxes and the penalty thereon, on lands and town lots bid off for the county, together with the costs of advertising the same for sale, which said taxes have been transferred from the tax roll to the book of tax sales with the amount of double erroneous assessments of property, except the assessments on lands and town lots which have been sold or entered on the book of tax sales for delinquent taxes; with the amount of percentage fees allowed by law to the county treasurer for collecting taxes; with the amount of money and the amount of warrants, or orders; or other evidences of indebtedness which the county treasurer is allowed by law to receive for taxes, which he pays over to his suc-

cessor in office; with the amount of taxes uncollected on the tax-roll, delivered over to his successor in office.

Same, items kept separately.

(1788) § **13.** The county clerk in making the above charges, credits and entries, shall state each different fund and each item of each different fund separately.

When to assess property.

(1789) § **14.** It shall be the duty of the county clerk to assess at a fair value the property of any person liable to pay taxes which the township assessor has failed to assess, and place the same on the tax roll; and the county treasurer shall collect the taxes on the same as in other cases; and it shall further be the duty of the county treasurer to notify the county clerk of any such property which may come to his knowledge and the county clerk, for the purpose of assessing the same, is authorized to administer oaths to the owner of such property, or to any other person, touching the value of the same, but the county clerk is not required to see such property in person.

Countersign treasurer's receipt, when.

(1790) § **15.** In all cases when any person shall pay any money into the county treasury, he shall take a receipt therefor from the county treasurer, but said receipt shall be of no validity until it is countersigned by the county clerk, except it be a tax receipt.

Report to auditor.

(1791) § **16.** That it shall be the duty of the county clerks of the several counties in this Territory; on or before the third Monday of July in each year, to make out and forward to the Auditor of the Territory, a financial exhibit of their respective counties for the preceding year ending June thirtieth. The said exhibits shall comprise a clear and concise statement of the financial condition of each county, including the amounts expended for county purposes; the amount of county warrants outstanding; the aggregate indebtedness of the county; the total amount of taxable property; the rate of tax levied; the amount of floating and bonded indebtedness, city and school districts in the county; the date of issue and date of maturity of all outstanding funds; the amount of sinking fund on hand; if any, for redeeming the same, and such other information as may be required by the Auditor of the Territory concerning the financial condition of their respective counties.

Draw orders on county treasurer.

(1792) § **17.** It shall be the duty of the county clerk to draw orders on the county treasurer of the proper county from time to time for any money that may have been collected for, or that may be due to any city, town, township, school district or other municipal organization in his county, in favor of the proper person or organization, and shall keep a record of the date and amount of all such orders, and the name of the person to whom given, and for what purpose, and in a settlement with the county treasurer, he shall give him credit for all such orders that have been paid by such treasurer and filed in his office.

Duty at close of treasurer's term.

(1793) § **18.** The county clerk at the close of any person's term of office as county treasurer, whether by resignation or otherwise, and at the time or before said treasurer's successor's term of office shall commence, shall place on the tax roll of his county, in a separate column, and opposite each description of property upon which the taxes then remain unpaid, the aggregate amount of such

unpaid taxes; and for such purpose, said tax roll shall be delivered to the county clerk, and no taxes shall be received in the mean time.

Warrant when cancelled.

(1794) § **19.** Whenever any county warrant issued to any person, remain in the office of the county clerk unclaimed for a period of three years from the date thereof, such warrant shall be returned by him to the board of county commissioners and cancelled.

List of officer's furnished Secretary.

(1795) § **20.** The county clerks of the several counties of this Territory, shall annually on the fourth Monday of January, prepare and file in the office of the Secretary of the Territory, a list of the officers of their respective counties, elected at the next [last] preceding general election, which list shall contain the genuine signatures of all county officers, and imprint of the official seal of such as are by law required to keep them, and the county clerk shall certify under the seal of his office, that such signatures and the imprints of such seals are the genuine signatures and seals of the respective officers, and that they were attached in his presence: *Provided*, That in case of any vacancy in any county office, the county clerk shall immediately transmit to the Secretary of the Territory the genuine signature of the person elected or appointed to fill such vacancy: *And provided further*, That any county clerk failing or refusing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and punished by a fine of not less than ten or more than fifty dollars.

Office hours.

(1796) § **21.** The county clerk shall keep his office open from eight o'clock a. m. to six o'clock p. m. of each secular day.

This act shall take effect and be in force from and after the final adjournment of the first session of the Legislative Assembly.

ARTICLE 6.—COUNTY COMMISSIONERS.

SECTION.
1. County commissioners, election, vacancy.
2. County divided into election districts.
3. Commissioner's bond.
4. County seal.
5. Meetings, general and special, notice of.
6. Chairman, how elected.
7. Accounts, manner and form of presentation, when allowed.
8. Chairman, duties and powers.
9. Equally divided on vote.
10. Copies of proceedings.
11. Certain jurisdiction.
12. Account with county treasurer,
13. Record of orders and decisions.
14. Records relating to bridges and roads.
15. Record of warrants on county treasurer.
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17. Record of cancelled warrants.
18. Civil action on behalf of county.
19. Commissioners' powers.
20. Same, fiscal measures.
21. Same, copy of field notes, maps,
22. Expenditure, when submitted to popular vote.
23. Higher tax voted on; special tax paid in money.
24. Mode of submitting questions to voters.
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26. Rate of tax levied, how regulated.

SECTION.
27. Bond proposition carried; tax, levy and collect.
28. Fund distinct from all others.
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32. Commissioners to provide court house, jail, fuel &c; sheriff's duties.
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34. Commissioners powers to erect buildings and contract.
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36. Advertisement for bids; bids accepted;
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38. Time and manner of appeal.
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42. Officers to account to commissioners.
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45. County orders to draw interest.
46. Publication of commissioners' proceeding,
47. County clerk's duties, compensation.
48. Commissioner's proceedings, time of publication.
49. Organization of new townships.
50. Blanks, safes, &c., for officers.
51. Officers violating this act.

AN ACT providing for county commissioners and defining the duties thereof.

[Took effect December 25, 1890]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

County commissioners, election, vacancy.

(1797) § **1.** At the first election held after the passage of this act for choice of county officers, there shall be chosen by the voters of the whole county, three county commissioners, who shall hold their offices as follows: the member having the highest number of votes shall hold his office until the first Tuesday in January one thousand eight hundred and ninety-five, and the other two until the first Tuesday in January one thousand eight hundred and ninety-three, and all of them shall hold until their successors are elected and qualified. When the county shall be divided into districts as provided by section two of this act, the district in which the member holding until January one thousand eight hundred and ninety-five resides shall be designated as the first commissioner's district, and the others numbered as second and third districts. At the general election in November one thousand eight hundred and ninety-two the voters in the second district shall elect a county commissioner who shall hold his office for four years from the first Tuesday in January following his election, and the voters in the third district shall at the same election elect one member, who shall hold his office for two years from January,

one thousand eight hundred and ninety-three. At the general election in November, one thousand eight hundred and ninety-four the third district shall elect one member for four years, and the voters of the first district shall elect one member for two years. At the general election held in November, one thousand eight hundred and ninety-six, the voters of the first district shall choose a member for four years and the legal voters of the second district shall choose one member for two years, and so on in rotation among the districts at each biennial election. If there be a vacancy a successor shall be chosen for the unexpired portion of the term made vacant.

County divided into election districts.

(1798) § **2.** Each county shall be divided by the board of county commissioners elected under this act into three compact districts as equal in population as possible, numbered respectively one, two and three, and subject to alteration at least once in three years, and one commissioner shall be elected from each of said districts by the voters of the district, as heretofore provided; but if in any county the afore mentioned board of county commissioners shall fail to make such division before any election for county commissioners such failure shall in no case prevent the election of said commissioners, and no person holding any state, county, township, or city office, any employe, officer or stock-holder in any railroad in which the county owns stock shall be eligible to the office of county commissioner.

Commissioners bond.

(1799) § **3.** Every county commissioner before entering upon the duties of his office shall execute a bond in the penal sum of not less than one or more than five thousand dollars, the amount and sufficiency of such bond to be determined by the judge having probate jurisdiction in the county, and said bond shall be filed and kept in the office of said court.

County seal.

(1800) § **4.** The board of county commissions shall procure and keep a seal with such emblems and devices as they may think proper, which shall be the seal of the county, and no other seal shall be used by the county clerk; and the impression of the seal hereby required to be kept by the stamp shall be sufficient sealing in all cases where sealing is required.

Meetings, general and special, no tice of

(1801)§ **5.** The county commissioners shall meet and hold sessions for the transaction of business at the court houses in their respective counties, or at the usual places of holding court, on the first Mondays in January, April, July and October of each year, and may adjourn from time to time; and the county clerk shall have power to call special sessions when the interest of the county demands it, upon giving five days notice of the time and object of calling the commissioners together, by posting up notices in three public places in the county or by publication in one newspaper in the county: *Provided*, That in case of vacancy in the office of register of deeds, the chairman of the board shall have power to call a special session for the purpose of filling the same until an election shall be held to fill such vacancy.

Chairman, how elected.

(1802) § **6.** At the first meeting of the county commissioners in each and every year they shall elect one of their number chairman, who shall act as chairman of the board of said commissioners

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during the year in which he is elected, or until his successor is elected, and in case of a vacancy from any cause whatever the board of county commissioners shall elect another chairman.

Accounts, manner and form of presenting, when allowed.

(1803) § **7.** No account shall be allowed by the board of county commissioners unless the same be made out in separate items, and the nature of each item stated, and when no specific fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such accounts shall be specified which account so made out shall be verified by affidavit setting forth that the same is just and correct and remains due and unpaid: *Provided*, That nothing in this section shall be construed to prevent any such board from disallowing any account in whole or in part when so rendered and verified, nor from requiring any other or further evidences of the truth and propriety thereof as they may think proper, and it shall be unlawful for any board of county commissioners to allow any claim or account against the county at any special or adjourned meeting of the board except for election expenses and jury fees, and all other claims or accounts against the county shall be allowed only at the regular meeting of the board in January, April, July and October of each year.

Chairman, powers and duties.

(1804) § **8.** It shall be the duty of the chairman of the board of county commissioners to preside at the meetings of said board, and he shall have the power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties; and all orders made by the board of county commissioners, and all warrants drawn on the county treasurer, shall be signed by the chairman and attested by the clerk.

Equally divided on vote.

(1805) § **9.** When the board of county commissioners are equally divided on any question they shall defer a decision until the next meeting of the board, and then the matter shall be decided by a majority of the board.

Copies of proceedings.

(1806) § **10.** Copies of the proceedings of the board of county commissioners, duly certified and attested by the county clerk under seal shall be received as evidence in all courts in this Territory.

Certain jurisdiction.

(1807) § **11.** The board of county commissioners shall have power to preserve order when sitting as a board, and may punish contempts by fines not exceeding five dollars, or by imprisonment in the county jail not exceeding twenty-four hours; they may force obedience to all orders made by attachment or other compulsory process, and when fines are aseessed by them the same may be collected before any justice of the peace having jurisdiction, and shall be paid over as other fines within ten days after they are collected.

Account with county treasurer.

(1808) § **12.** The said commissioners shall keep a distinct account with the treasurer of the county, iu a book provided for that purpose, commencing from the day on which the treasurer became qualified and ccntinuing until the same or another person is qualified as treasurer, in which account they shall charge the treasurer with all sums paid him and for all sums for whfch the

treasurer is accountable to the county, and they shall credit him with all warrants returned and cancelled, with all moneys paid and with all vouchers presented by him and with all matters with which the treasurer is to be credited on account; and the said board in their settlement with the treasurer shall keep the general, special and road tax separate, that any citizen of the county may see how the same is expended.

Record of orders and decisions.

(1809) § **13.** They shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges; and all orders for the allowance of money from the county treasury shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively as follows: From the first day of January to the thirty-first day of December, inclusive in each year.

Records relating to bridges and roads.

(1810) § **14.** They shall keep a book for the entry of all proceedings and adjudications relating to bridges, and the establishment, change or discontinuance of roads.

Record of warrants on county treasurer.

(1811) § **15.** They shall keep a book for the entry of warrants on the county treasurer, showing number, date, amount and name of the payee of each warrant drawn on the treasury, which book may be known as the "Warrant Book", and the warrants shall be numbered in relation to the order and decision allowing the amount for which the same was drawn.

Warrants cancelled, when.

(1812) § **16.** The board of commissioners of the several counties of this Territory are hereby authorized and required at each regular meeting to cancel and destroy all warrants drawn on any fund of the county that may have remained uncalled for and on file for a period of three years and upwards next preceding the regular meeting at which the cancellation takes place.

Record of cancelled warrants.

(1813) § **17.** Said commissioners before cancelling and destroying any such warrants shall cause to be entered in the minutes of their proceedings a brief description thereof, containing the name of the payee, the number, date and amount of each warrant destroyed.

Civil actions on behalf of county.

(1814) § **18.** They shall have power to institute and prosecute civil actions in the name of the county, for and on behalf of the county.

Commissioner's powers.

(1815) § **19.** First. They shall have power to make all orders respecting the property of the county, to sell the public grounds of the county, and to purchase other grounds in lieu thereof; and for the purpose of carrying out the provisions of this section it shall be sufficient to convey all the interest of the county in such grounds when an order made for the sale and a deed is executed in the name of the county by the chairman of the board of commissioners, reciting the order, and signed and acknowledged by him for and on behalf of the county: *Provided, however*, That the question of the sale of such public grounds or lands, if the value thereof exceed the sum of two thousand dollars, shall be first submitted to a vote of the people of the county as hereinafter provided, and sanctioned by a majority vote thereof.

Second. They shall have power to levy a tax not exceeding the amount now authorized by law, and to liquidate indebtedness.

Third. To audit the accounts of all officers having the care management, collection or disbursement of auy money belonging to the county or appropriated for its benefit.

Fourth. To contract and repair bridges, and to open, lay out, vacate and change highways, to establish one or more election precincts in each municipal township in their county; and to equalize the assessment rolls of their county, in the manner provided by law.

Fifth. To furnish necessary blank books, plats, blanks and stationery for clerks of the district court, county clerk, register of deeds, county treasurer and probate judge, county surveyor and county attorney of their respective counties, to be paid out of the county treasury; also a fire proof safe or vault when in their judgment the same shall be deemed advisable, in which to keep all the books, records, vouchers, and papers pertaining to the business of the county.

Sixth. To set off, organize and change the boundaries and townships in their respective counties, to designate and give names therefor, and to fix the time and place for holding the first election therein.

Seventh. To do and perform such other duties and acts that boards of county commissioners are now or may hereafter be required by law to do and perform.

Eighth. To locate lands in lieu of section sixteen and thirty-six in their respective counties as provided for by law.

Same, fiscal measures.

(1816) § **20.** They shall superintend the fiscal concerns of the county and secure their management in the best manner; they shall keep an account of the receipts and expenditures of the county, and on the first Monday of July annually, they shall cause a full and accurate statement of the assessments, receipts and expenditures of the preceding year, to be made out in detail under separate heads, with an account of all the debts payable to and by the county treasurer, and they shall have the same printed in at least one newspaper in their county, and if there be no paper in the county the same shall be posted up at the usual place of holding their sessions, and at a public place in each precinct in the county.

Same, copy of field notes, maps.

(1817) § **21.** Said board is authorized to procure for their county a copy of field notes, as soon as practicable, of the original survey of their county by the United States, and cause a map of the county to be constructed therefrom on a scale of not less than one inch to a mile, and laid off in Congressional townships and sections, to be kept open in the office of the county clerk, and the field notes to be deposited in the same office.

Expenditures, when submitted to popular vote.

(1818) § **22.** They shall submit to the people of the county at any regular or special election any question involving any extraordinary outlay of money by the county or any expenditures greater in amount than can be provided for by the annual tax, or whether the county will construct any court house, jail or other public buildings, or aid or construct any road or bridge, and may aid any enterprise designed for the county, whenever a majority

of the people thereof shall authorize the same as hereinafter provided.

Higher tax voted on; special tax paid in money.

(1819) § **23.** When county warrants are at a depreciated value, the said commissioners may in a like manner submit the question whether a tax of a higher rate than that provided for shall be levied; and in all cases when an additional tax is laid in pursuance of a vote of the people of the county, or for constructing or ordering to be constructed any road or bridge, or for aiding in any enterprise contemplated by the preceding section, such special tax shall be paid in money and in no other manner.

Mode of submitting questions to votes.

(1820) § **24.** The mode of submitting questions to the people contemplated by the last two sections shall be the following: The whole question, including the sum desired to be raised, the amount of tax desired to be levied, the rate per annum, and the whole regulation, including the time of its taking effect or having operation, if it be of a nature which can be set forth, and the penalty of its violation if there be one, is to be published at least four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by posting up in at least one of the most public places in each election precinct in the county; and in all cases the notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

Same, tax levy embraced.

(1821) § **25.** When the question submitted involves the borrowing or expenditure of money the proposition of the question must be accompanied by a proposition to levy a tax for the payment thereof in addition to the usual taxes provided for by law; and no vote adopting the question proposed shall be valid unless it likewise adopts the amount of tax to be levied to meet the liability incurred.

Rate of tax levied, how regulated.

(1822) § **26.** The rate of tax levied in pursuance of the last four sections shall in no case exceed five mills on the dollar of the county valuation in one year. When the object is to borrow money to aid in the erection of public buildings, the rates shall be such as to pay the debt in ten years; when the object is to construct or aid in constructing any road or bridge, the annual rate shall not exceed two mills on the dollar of the valuation; and any special tax or taxes levied in pursuance of this chapter becoming delinquent shall draw the same rate of interest as ordinary taxes levied in pursuance of the revenue laws of this Territory.

Bond proposition carried; tax, levy and collect.

(1823) § **27.** The said commissioners being satisfied that the above requirements have been substantially complied with, and that a majority of votes were cast in favor of the proposition submitted, shall cause the same to be entered at large upon the book containing the record of their proceedings, and they shall then have power to levy and collect the special tax in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the board of county commissioners.

Fund distinct from all others.

(1824) § **28.** Money raised by the county commissioners in

pursuance of the last five sections is specially appropriated and constitutes a fund distinct from all others, in the hands of the county treasurer until the obligations assumed are discharged.

Unexpended balance of special fund.

(1825) § **29**. Whenever there remains in the treasury of any county an unexpended balance of any special fund, and all claims against such funds have been fully paid, and the purpose for which it was created has been fully observed, and there remains no further use for such balance for the purpose for which it was created, it shall be lawful for the board of county commissioners of such county to transfer such balance to any other fund of the county or subdivisions to which such balance belonged.

Warrants on county treasurer.

(1826) § **30**. All warrants upon the county treasurer shall be issued upon the order of the board of county commissioners, signed by the chairman thereof and attested by the signature of the county clerk with the county seal attached, and shall designate the fund upon which they are drawn.

Place and manner of holding sessions.

(1827) § **31**. They shall hold their sessions with open doors, and transact all business in the most public manner, and where the county has no court house or the court house shall be unfit or inconvenient, they may hold their sessions for the transaction of business at any other suitable place at the county seat. All matters pertaining to the interest of the county shall be heard by the board of county commissioners in session only, but they may continue any business from any regular session to an intermediate day.

Commissioners to provide court house, jail, fuel, etc, sheriff's duties.

(1828) § **32**. In any county where there is no court house or jail erected by the county, or where those erected have not sufficient capacity, it shall be the duty of the board of county commissioners to provide for court room, jail, and offices for the following named officers: Sheriff, treasurer, register of deeds, county clerk, county attorney, superintendent of public schools and judge of probate, to be furnished by the county in a suitable building or buildings, for the lowest rent to be obtained at the county seat, or to secure and occupy suitable rooms at a free rent within the limits of the county seat or any of the additions thereto, until such county builds a court house. They shall also provide the courts appointed to be held therein, with attendants, fuel, lights and stationery, suitable and sufficient for the transaction of their business. If the commissioners neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect when certified by the court, shall be a county charge.

What court rooms to be rented.

(1829) § **33**. The power to rent court rooms shall only extend to such rooms as the courts using the same may approve.

Commissioner's power to erect buildings, and contract.

(1830) § **34**. Said board shall have authority and power, under the provisions of this act, to provide for the erection and repairing of court houses, jails and other necessary buildings within and for the county, and to make contracts on behalf of the county for the building or repairing of the same, but no expenditure for the purpose herein named greater than can be paid out of the annual revenue of the county for the current year, shall be made, unless the question of such expenditure shall have first been submitted to a vote of the qualified voters of such county, and shall have

been approved by a majority of the votes so cast, and the board shall determine the amount and rate of taxes to be submitted to a vote for such purpose.

Building fund.

(1831) § **35**. After a building fund has been accumulated, either from the proceeds of the sale of town lots or from any other source, it shall be the duty of the board of county commissioners within one year from the time such fund becomes available, to proceed to the erection of the necessary county buildings including a jail; if such fund shall in the judgment of the board be sufficient for that purpose.

Advertisement for bids; bids accepted, specifications.

(1832) § **36**. The board shall cause an advertisement for bids for the erection of such buildings to be printed in some newspaper published in the county for at least three months prior to the opening of the bids, and in such other newspaper in the Territory and for such period as the board may deem advisable. Such advertisement shall state where the plans and specifications may be examined, and the time allowed for the completion of such buildings, and when the bids will be opened and passed upon by the board, which must be at one of the regular sessions and must be public. The lowest responsible bid must in all cases be accepted, unless all bids are rejected, and the contracts for such buildings shall be so conditioned that not more than one-half of the payment for the same shall be made until the contract shall be executed and the buildings completed to the satisfaction and acceptance of the board. Said board may further require a bond to accompany each bid, conditioned that the bidder will enter into a contract with approved security, for the performance of the work in accordance with the plans and specifications, in case his bid is accepted.

Appeal from commissioner's decision.

(1833) § **37**. From all decisions of the board of commissioners upon matters properly before them, there shall be allowed an appeal to the district court by any persons aggrieved including the county by its county attorney upon filing a bond with sufficient penalty, and one or more sureties to be approved by the county clerk, conditioned that the appellant will prosecute his or her appeal without delay, and pay all costs that he or she may be adjudged to pay in the said district court; said bond shall be executed to the county, and may be sued in the name of the county upon breach of any condition therein: *Provided*, That any county attorney, upon the written demand of at least seven tax payers of the county, shall take an appeal from any action of the board of county commissioners of any county within his district when said action relates to the interests or affairs of the county at large or any portion thereof, in the name of the proper county, when he deems it to the interest of the county so to do; and in such case no bond shall be required or given and upon serving the notice provided for in the next section of this act the county clerk shall proceed the same as if a bond had been filed, and his fees for making the transcript shall be paid as other claims by the county.

Time and manner of appeal.

(1834) § **38**. Said appeal shall be taken within twenty days after the decision of said board, by serving a written notice on

one of the board of county commissioners, and the clerk shall, upon the filing of the bond as hereinbefore provided, make out a complete transcript of the proceedings of said board relating to the matter of their decision thereon, and shall deliver the same to the clerk of the district court.

Appeal, when filed

(1835) § **39**. Said appeal shall be filed by the first day of the district court next after such appeal and said cause shall stand for trial at such term.

Same, how docketed.

(1836) § **40**. All appeals thus taken to the district court shall be docketed as other causes pending therein, and the same shall be heard and determined *de novo*.

District courts disposal of appeals.

(1837) § **41**. The district court may make a final judgment and cause the same to be executed, or may send the same back to the board with an order how to proceed, and require said board of county commissioners to comply therewith by a mandamus or attachment as for contempt.

Officers to account to commissioners.

(1838) § **42**. All treasurers, sheriffs, clerks, constables and other officers chargeable with money belonging to the county shall render their accounts to and settle with the county commissioners at the time required by law, and pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

Redemption money in the treasury, commissioner's examination.

(1839) § **43**. It shall be the duty of the board of county commissioners in the several counties in this Territory at each annual meeting of said board, to examine the county treasurer's "tax-sale book" and "stub receipts" and ascertain the amount of redemption money in the treasury and compel the said treasurer to account for the same.

Commissioners to adjust delinquent officer's accounts.

(1840) § **44**. If any person thus chargeable shall neglect or refuse to render true accounts or settle as aforesaid, the county commissioners shall adjust the accounts of such delinquent according to the best information they can obtain, and ascertain the balance due the county, and order suit to be brought in the name of the county therefor; and such delinquent shall not be entitled to any commission, and shall forfeit and pay to the county a penalty of twenty per cent on the amount of funds due the county.

County orders to draw interest,

(1841) § **45**. All county orders hereafter drawn by the proper authorities of any county shall ninety days after having been presented to the county treasurer of the respective counties and by him endorsed "not paid for want of funds in the treasury" from said date draw interest at the rate of six per cent per annum.

Publication of commissioner's proceedings.

(1842) § **46**. It shall be the duty of the board of county commissioners of the several counties of this Territory to cause to be published in a newspaper printed in their respective counties, a full and complete report of all their official proceedings at each regular and special meeting, such proceedings to be so published as soon after any meeting of the commissioners as practicable, and the board of county commissioners shall pay for the same as may be provided for.

County clerk's duties, compensation.

(1843) § **47**. It is hereby made the duty of the county clerk to make out a full and complete report of the proceedings of each

regular and special meeting of the board, and to transmit the same to the publishers of the newspaper selected by such board to publish such proceedings, said report to be made out and transmitted by such clerk within one week from the time such proceedings were had. Such clerk shall be allowed by the board a reasonable compensation for such services.

Commissioners proceedings, time of publication.

(1844) § **48**. It shall be the duty of the publisher of any newspaper selected to publish any proceedings of the board of commissioners of the several counties, to cause any proceedings as aforesaid received by him from any county clerk, to be published in the issue of his paper next succeeding the time of their reception.

Organization of new townships.

(1845) § **49**. The board of county commissioners shall not set off, or organize any new township unless it shall contain territory equal to at least thirty-six square miles and at least three hundred inhabitants within the limits thereof, and whenever any new township shall be organized or the boundaries of any township changed, they shall cause a plat and record thereof to be made by the clerk specifying the name and boundaries of such township, which plat and record shall be kept in the office of the county clerk, and a copy thereof under the seal of said board shall be made by said clerk and filed with the proper officer of said township.

Blanks, sales, etc., for officers.

(1846) § **50**. The board of commissioners of their respective counties shall, at the expense of the county, furnish, annually and in due season to the assessors of the county suitable blank assessment rolls, for the several townships prepared in accordance with the provisions of law, and shall also provide suitable cases and other furniture for the safe and convenient keeping of all the books, documents and papers belonging to each county officer, and also official seals for each of said officers, where the same are required by law.

Officers violating this act.

(1847) § **51**. That every person who is either elected or appointed to the office of county commissioner of any county in the Territory of Oklahoma who shall wilfully violate any provision of law, or fail to perform any duty required of him by law, shall be adjudged guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than fifty nor more than one thousand dollars, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment.

This act shall take effect and be in force from and after the date of the final adjournment of the first session of the Legislative Assembly.

CHAPTER XXV.—CRIMES AND PUNISHMENT.

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34. Lotteries.
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58. Miscellaneous crimes.
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ARTICLE 1.—PRELIMINARY PROVISIONS.

SECTION.
1. Title of code.
2. What acts are criminal.
3. Crime defined.
4. Crimes divided.
5. Felony defined.
6. Misdemeanor defined.
7. Objects of penal code.
8. Conviction must precede punishment.
9. Jury must find degree of crime.
10. Rules of construction.
11. Punishment determined by the court.
12. Punishments.
13. Punishment of felony.
14. Punishment of misdemeanor.

Title of code.

(1848) § **1.** This act shall be known as the penal code of the Territory of Oklahoma.

What acts are criminal.

(1849) § **2.** No act or omission shall be deemed criminal or punishable except as prescribed or authorized by this code. The words "This Code" as used in the "Penal Code" shall be construed to mean "Statutes of this Territory.

Crime defined.

(1850) § **3.** A crime or public offense is an act or omission

forbidden by law, and to which is annexed, upon conviction, either of the following punishments:

First. Death.

Second. Imprisonment.

Third. Fine.

Fourth. Removal from office; or,

Fifth. Disqualification to hold and enjoy any office of honor, trust, or profit, under this Territory.

Crimes divided.

(1851) § **4.** Crimes are divided into:

First. Felonies.

Second. Misdemeanors.

Felony defined.

(1852) § **5.** A felony is a crime which is, or may be, punishable with death, or by imprisonment in the Territorial prison.

Misdemeanor defined.

(1853) § **6.** Every other crime is a misdemeanor.

Objects of penal code.

(1854) § **7.** This code specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; and defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each. The manner of prosecuting and convicting criminals is regulated by the code of criminal procedure.

Conviction must precede punishment.

(1855) § **8.** The punishments prescribed by this code can be inflicted only upon a legal conviction in a court having jurisdiction.

Jury must find degree of crime.

(1856) § **9.** Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, shall find the degree of the crime of which he is guilty.

Rule of construction.

(1857) § **10.** The rule of the common law that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

Punishment determined by the court.

(1858) § **11.** The several sections of this code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

Punishments.

(1859) § **12.** Whenever in this code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case shall be determined by the court authorized to pass sentence, within such limits as may be prescribed by this code.

Punishment of felonies

(1860) § **13.** Except in cases where a different punishment is prescribed by this code, or by some existing provision of law, every offense declared to be felony is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the Territorial prison not exceeding two years, or by both such fine and imprisonment.

Punishment of misdemeanor.

(1861) § **14.** Except in cases where a different punishment is prescribed by this code or by some existing provisions of law, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding five hundred dollars, or both such fine and imprisonment; *Provided, however*, That if there be in any act, chapter

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or section of the laws of this Territory a provision making any specific act criminal and providing the punishment therefor, and there be in this Penal Code any provision or section making the same act a criminal offense or prescribing the punishment therefor, that offense and the punishment thereof, shall be governed by the special provisions made in relation thereto, and not by the provisions of this Penal Code: *Provided, further,* In all cases wherein the offering, giving or receiving bribes are made criminal by the provisions of the Penal Code, the party to such crime who shall first furnish information in relation thereto, as against the other parties and in any prosecution therefor, shall testify to the same truthfully and fully, shall not thereafter be criminally liable therefor, but in such case no conviction shall be had on the uncorroborated testimony of one such witness.

ARTICLE 2.—OF PERSONS LIABLE TO PUNISHMENT FOR CRIME.

SECTION.
1. Who are liable to punishment.
2. Who are capable of committing crime.
3. Intoxication as an element of crime.
4. Morbid propensity no defense.
5. Insanity; court may commit for.
6. Involuntary acts.
7. Duress excuses what.
8. Subjection when inferred from coverture.
9. Subjection not inferred.
10. Inference of subjection may be rebutted.
11. Public foreign ministers exempt.

Who are liable to punishment.

(1862) § **1.** The following persons are liable to punishment under the laws of this Territory:

First. All persons who commit, in whole or in part, any crime within this Territory.

Second. All who commit theft out of this Territory, and bring, or are found with the property stolen, in this Territory.

Third. All who, being out of this Territory, abduct or kidnap, by force or fraud, any person contrary to the laws of the place where such act is committed, and bring, send, or convey such person within the limits of this Territory, and are afterward found therein.

Fourth. And all who, being out of this Territory. cause or aid, advise or encourage, another person, causing an injury to any person or property within this Territory by means of any act or neglect which is declared criminal by this code, and who are afterward found within this Territory.

Who are capable of committing crimes.

(1863) § **2.** All persons are capable of committing crimes, except those belonging to the following classes:

First. Children under the age of seven years.

Second. Children of the age of seven years, but under the age of fourteen years, in the absence of proof that at the time of committing the act or neglect charged against them, they knew it wrongfulness.

Third. Idiots.

Fourth. Lunatics, insane persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.

Fifth. Persons who committed the act, or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation.

Sixth. Persons who committed the act charged without being conscious thereof.

Seventh. Persons who committed the act, or made the omission charged, while under involuntary subjection to the power of superiors.

Intoxication as an element of crime.

(1864) § **3**. No act committed by a person while in the state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition.

Morbid propensity no defense.

(1865) § **4**. A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

Insanity; court may commit for.

(1866) § **5**. When a jury have returned a verdict acquitting a defendant upon the ground of insanity, the court may thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public safety, order him to be committed to the Territorial lunatic asylum, or to the care of such person or persons as the court may direct, till he become sane.

Involuntary acts.

(1867) § **6**. The involuntary subjection to the power of a superior which exonerates a person charged with a criminal act or omission fram punishment therefor, arises either from:

First. Duress: or,

Second. Coverture.

Duress excuses, what.

(1868) § **7**. The duress which excuses a person from punishment who has committed a prohibited act or omission must be an actual compulsion by use of force or fear.

Subjection, when inferred from coverture.

(1869) § **8**. A subjection sufficient to excuse from punishment may be inferred in favor of a wife from the fact of coverture whenever she committed the act charged in the presence and with the assent of her husband, except where such act is a participation in:

First. Treason.

Second. Murder.

Third. Manslaughter.

Fourth. Maiming.

Fifth. An attempt to kill.

Sixth. Rape.

Seventh. Abduction.

Eighth. Abuse of children.

Ninth. Seduction.

Tenth. Abortion, either upon herself or upon another female.

Eleventh. Concealing the death of an infant, whether her own or that of another.

Twelfth. Fraudulently producing a false child, whether as her own or that of another.

Thirteenth. Bigamy.

Fourteenth. Incest.

Fifteenth. The crime against Nature.

Sixteenth. Indecent exposure.

Seventh. Obscene exhibition of books and prints.

Eighteenth. Keeping a bawdy or other disorderly house.

Subjection not inferred.

(1870) § **9.** In case of the crimes enumerated in the last section the wife is not excused from punishment by reason of her subjection to the power of her husband unless the facts proved show a case of duress as defined in the second preceding section.

Inference of subjection may be rebutted.

(1871) § **10.** The inference of subjection arising from the fact of coverture may be rebutted by any facts showing that in committing the act charged the wife acted freely.

Public foreign ministers exempt.

(1872) § **11,** Ambassadors and other public ministers from foreign governments accredited to the President or the government of the United States, and recognized by it according to the laws of the United States, with their secretaries, messengers, families and servants are not liable to punishment in this Territory, but are to be returned to their own country for trial and punishment.

ARTICLE 3.—OF PARTIES TO CRIMES.

SECTION.
1. Classification of parties.
2. Principals defined.
3. Accessories defined.
4. No accessories to misdemeanor.
5. Punishment of accessories.

Classification of parties.

(1873) § **1.** The parties to crimes are classified as;

First. Principals, and,

Second. Accessories,

Principals defined.

(1874) § **2.** All persons concerned in the commission of crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, are principals.

Accessories defined.

(1875) § **3.** All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.

No accessories to misdemeanor.

(1876) § **4.** In misdemeanor, there are no accessories.

Punisnment of accessories.

(1877) § **5.** Except in cases where a different punishment is prescribed by law, an accessory to a felony is punishable by imprisonment in a Territorial prison not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

ARTICLE 4.—OF CRIMES AGAINST RELIGION AND CONSCIENCE. Chap. 25.

SECTION.
1. Blasphemy defined.
2. Serious discussion not blasphemy.
3. Blasphemy is a misdemeanor.
4 Profane swearing.
5. Punishment for profane swearing.
6. Summary conviction for profane swearing.
7. Penalties, how collected.
8. Obscene language, how punished.
9. The Sabbath.
10. Sabbath breaking.
11. Day defined.
12. Sabbath breaking defined.
13. Sabbath labor.
14. Persons observing other day as Sabbath.
15. Public sports.
16. Trades and employments.
17. Public traffic.
18. Serving process.
19. Punishment for Sabbath breaking.
20. Fines collected, how.
21. Maliciously serving process on Sunday.
22. Compelling form of belief.
23, Preventing religious act.
24. Disturbing religious meeting.
25. Definition of disturbance.

(1878) § **1.** Blasphemy consists in wantonly uttering or publishing words, casting contumelious reproach or profane ridicule upon God, Jesus Christ, the Holy Ghost, the Holy Scriptures or the Christian or any other religion. Blasphemy defined.

(1879) § **2.** If it appears beyond reasonable doubt that the words complained of were used in the course of serious discussion, and with intent to make known or recommend opinions entertained by the accused, such words are not blasphemy. Serious discussion not blasphemy

(1880) § **3.** Blasphemy is a misdemeanor. Blasphemy a misdemeanor.

(1881) § **4.** Profane swearing consists in any use of the name of God, or Jesus Christ, or the Holy Ghost, either in imprecating divine vengeance upon the utterer, or any other person, or in light, trifling or irreverent speech. Profane swearing.

(1882) § **5.** Every person guilty of profane swearing is punishable by a fine of one dollar for each offense. Punishment of profane swearing.

(1883) § **6.** Whenever any profane swearing is committed in the presence and hearing of any justice of the peace, mayor, recorder, or alderman of any city, while holding a court, or nnder any other circumstances such as in the opinion of the magistrate amount to a gross violation of public decency, such magistrate may, in his discretion, immediately convict the offender, without any other proof. Summary conviction for profane swearing

(1884) § **7.** If the offender does not forthwith pay the penalties incurred, with the costs, or give security for their payment within six days, he shall be committed by warrant to the county jail for every offense, or for any number of offenses whereof he was convicted at one and the same time, for not less than one day, nor more than three days; there to be confined in a room separate from all other prisoners. Penalties, how collected.

(1885) § **8.** If any person shall utter or speak any obscene or lascivious language or word in any public place, or in the presence of females, or in the presence of children under ten years of age, he shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of this Territory, he shall be liable to a fine of not more than one hundred dollars, or imprisonment for not more than thirty days, or both, at the discretion of said justice. Obscene language, how punished.

(1886) § **9.** The first day of the week being by very general The Sabbath.

consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless and serious interruptions of the repose and religious liberty of the community.

Sabbath breaking.

(1887) § **10**. Any violation of this prohibition is Sabbath-breaking,

Day defined

(1888) § **11**. Under the term "day" as employed in the phrase "first day of the week," in the seven sections following, is included all the time from midnight to midnight.

Sabbath breaking defined.

(1889) § **12**. The following are the acts forbidden to be done on the first day of the week, the doing of any of which is Sabbath-breaking:

First. Servile labor.
Second. Public sports.
Third. Trades, manufactures and mechanical employments.
Fourth. Public traffic.
Fifth. Serving process, unless authorized by law so to do.

Sabbath labor

(1890) § **13**. All manner of servile labor on the first day of the week is prohibited, excepting works of necessity or charity.

Persons observing other day as Sabbath.

(1891) § **14**. It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

Public sports.

(1892) § **15**. All shooting, sporting, horse-racing, gaming or other public sports, upon the first day of the week, are prohibited.

Trades and employments

(1893) § **16**. All trades, manufactures and mechanical employments, upon the first day of the week, are prohibited.

Public traffic.

(1894) § **17**. All manner of public selling, or offering, or exposing for sale publicly, of any commodities upon the first day of the week, is prohibited, except that meats, milk and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

Serving process.

(1895) § **18**. All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service shall be specially authorized by law.

Punishment for Sabbath-breaking

(1896) § **19**. Every person guilty of Sabbath-breaking is punishable by a fine of one dollar for each offense.

Fines collected, how; no exemption.

(1897) § **20**. The fines prescribed in this chapter for profane swearing and for Sabbath-breaking, may be collected in the manner prescribed by law, for the collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs.

Maliciously serving process on Saturday observed as Sunday.

(1898) § **21**. Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time; and does not labor on that day, or serves

upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

Compelling form of belief

(1899) § **22.** Any wilful attempt, by means of threats or violence to compel any person to adopt, practice or profess any particular form of religious belief, is a misdemeanor.

Preventing religious act

(1900) § **23.** Every person who wilfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

Disturbing religious meeting.

(1901) § **24.** Every person who wilfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts or things hereinafter enumerated, is guilty of a misdemeanor.

Definition of disturbance.

(1902) § **25.** The following are the acts deemed to constitute disturbance of a religious meeting:

First. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting.

Second. Exposing to sale or gift any ardent or distilled liquors, or keeping open any huckster shop within one mile of the place where any religious society or assembly shall be actually convened for religious worship, and in any other place than such as shall have been duly licensed and in which the person accused shall have actually resided or carried on business.

Third. Exhibiting, within a like distance, any shows or plays without a license by the proper authority.

Fourth. Engaging in, or aiding or promoting within the like distance, any racing of animals or gaming of any description.

Fifth. Obstructing in any manner, without authority of law, within the like distance, the free passage along any highway to the place of such meeting.

ARTICLE 5.—CRIMES AGAINST THE ELECTIVE FRANCHISE.

SECTION.

1. Giving or receiving bribe.
2 Illegal influence.
3. Betting upon election.
4 Offers of office.
5 Communicating an offer of office.
6. Furnishing money for elections.
7. Defrauding an elector of his vote.
8 Obstructing electors at the polls.
9 Double voting.
10 Unqualified voting.
11. Procuring unqualified voting.
12. Same; entering precinct.
13 Voting out of precinct.
14 Voting unlawfully at annual township meeting.
15. Convicted felon.
16. Name registered improperly.
17 Personating registered voter.
18 False statements upon registration.
19. What constitutes a false statement.
20. Disturbance of public meeting.
21. Preventing public meeting.

SECTION.

22. Preventing attendance at public meeting.
23. Intimidating voter.
24. Violence ~~or intimidation~~ to procure votes.
25. Disobedience to judges of election.
26. Violence which impedes an election.
27. Summary arrest.
28. Arrest no defense to prosecution.
29. Destroying ballots in boxes.
30. False poll list.
31. Misconduct of judges.
32. Falsely canvassing or certifying votes.
33. Bribing officer of election.
34. Disfranchisement.
35. Witness not excused from testifying.
36. Election defined.
37. Irregularities in election no defense.
38. Not apply to legal interference.
39. Elections for determination of questions.
40. Good faith a defense.
41. Selling liquor on election day.

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Giving or receiving bribes.

(1903) § **1**. Every person who by offering to give or by giving a bribe, to any elector, or who by menace or other corrupt means, either directly or indirectly attempts to influence such elector in giving his vote at any election shall be punished by a fine not exceeding one thousand dollars and not less than one hnndred dollars and be imprisoned in the county jail not exceeding one year and not less than three months.

Illegal influence.

(1904) § **2**. Every person offering, giving or loaning to another any money, or other thing of value to induce him to influence any elector to vote in a particular way, or for any person at any such election, shall be punished by a fine not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding one year, or by doth such fine and imprisonment.

Betting upon an election.

(1905) § **3**. Every person who makes, offers or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast either in the aggregate, or for any particular candidate, or upon the vote to be cast by any person or persons, or upon the decision to be made by any inspector or canvasser, of any question arising in the course of an election, or upon any event whatever depending upon the conduct or result of an election, is guilty of a misdemeanor.

Offers of office.

(1906 § **4**. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person or persons to office, as an inducement or consideration to any person to vote for, to procure or aid in procuring the election of such candidate, is guilty of misdemeanor.

Communicating an offer of office.

(1907) § **5**. Every person who, not being a candidate, comunicates any offer made in violation of the last section, to any person, with intent to induce him to vote for or procure or aid in procuring the election of the candidate making the offer, is guilty of misdemeanor.

Furnishing money for elections.

(1908) § **6**. Every person, who with intent to promote the election, either of himself or of any other person, or candidate, either:

First. Furnishes, or engages to pay or deliver any money or property, for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick, poor, or infirm; or,

Second. Furnishes, or engages to pay or deliver any money or property, for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions. and of printing and circulating ballots, handbills and other papers, previous to such election, is guilty of misdemeanor.

Defrauding an elector of his vote.

(1909) § **7**. Every person who fraudulently alters the ballot of any elector, or substitutes one ballot for another, or furnishes any elector with a ballot containing more than the proper number of names, or who intentionally practices any fraud upon any elector to induce him to deposit a ballot as his vote, and to have the

same thrown out and not counted, or otherwise to defraud him of his vote, is guilty of a misdemeanor.

Obstructing electors at the polls.

(1910) § **8.** Every person who wilfully and without lawful authority obstructs, hinders or delays any elector on his way to any poll where an election shall be held, is guilty of a misdemeanor.

Double voting.

(1911) § **9.** Every person who votes more than once at any election, or who offers to vote after having once voted, either in the same or in another election district, shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding one year.

Unqualified voting.

(1912) § **10.** Every person knowing himself not to be a qualified voter, who votes or offers to vote at any election, shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months.

Procuring unqualified voting.

(1913) § **11.** Every person who procures. aids, assists, counsels or advises another to give his vote, knowing that such person is disqualified, shall be punished by fine not exceeding five hundred dollars, nor less than fifty dollars, and by imprisonment in the county jail not exceeding one year.

Same.

(1914) § **12.** Every person who procures or counsels another to enter any town, ward, or election district for the purpose of giving his vote at an election, knowing that such person is not entitled so to vote, is guilty of a misdemeanor.

Voting out of precinct.

(1915) § **13.** Every person who, at any election, knowingly votes or offers to vote in any election district in which he does not reside, or in which he is not authorized by law to vote, is guilty of a misdemeanor.

Voting unlawfully at town meetings.

(1916) § **14.** Every person who votes at any annual township meeting, in a township in which he does not reside, or who offers to vote at any annual township meeting after having voted at an annual township meeting held in another township within the same year, is guilty of a misdemeanor.

Convicted elon.

(1917) § **15,** Every person who, having been convicted of any bribery or felony, thereafter offers to vote at any election without having been pardoned and restored to all the rights of a citizen, is guilty of a misdemeanor.

Name registered improperly

(1918) § **16.** Every person who causes his name to be registered as that of an elector upon any registry of voters authorized by law to be kept in any town, city or election district of this Territory, knowing that he is not a qualified voter within the Territorial limits covered by such registry, is punishable by imprisonment in the Territorial prison, not less than one year.

Personating a registered voter.

(1919) § **17.** Every person who, within any city, town, or election district in this Territory in which a registry of qualified voters is by law authorized to be kept, falsely personates a registered voter, and in such personating offers to vote at any election, is punishable by imprisonment in the Territorial prison not less than one year.

False statements upon registration.

(1920) § **18.** Every person who, at the time of requesting his name to be registered as that of a qualified voter, upon any regis- tyr ofvoters authorized by law to be kept in any city, town, or

election district of this Territory, or at the time of offering his vote at any election, knowingly makes any false statement or employs any false representation or false pretense or token, to procure his name to be registered, or his vote to be received, is guilty of a misdemeanor.

What constitutes a false statement.

(1921) § **19**. A false statement, representation or token, made or used in the presence and to the knowledge of a person requesting his name to be registered, or offering his vote, is to be deemed made by himself, if it appears that it was made or used in support of his claim to be registered or to vote, that he knew it to be false, and suffered it to pass uncontradicted.

Disturbance of public meeting.

(1922) § **20**. Every person who wilfully disturbs or breaks up any public meeting of electors and others, lawfully being held for the purpose of considering public questions, is guilty of a misdemeanor.

Preventing public meeting.

(1923) § **21**. Every person who, by threats, intimidations or unlawful violence, wilfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor.

Preventing attendance at public meeting.

(1924) § **22**. Every person who makes use of any force or violence, or of any threat to do any unlawful act, as a means of preventing an elector from attending any public meeting lawfully held for the purpose of considering any public questions, is guilty of a misdemeanor.

Intimidating voter.

(1925) § **23**. Every person who wilfully, by unlawful arrest, by force and violence, or by threats or intimidation, prevents or endeavors to prevent an elector from freely giving his vote at any election, or employs either of such means to hinder him from voting, or to cause him to vote for any person or candidate, shall be punished by a fine not exceeding one thousand dollars and not less than fifty dollars.

Violence or intimidation to procure votes.

(1926) § **24**. Every person who procures or endeavors to procure the vote of any elector, or the influence of any person or other electors, at any election, for himself, or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealings in business or trade, or enforcing the payment of debts, or bringing a suit or criminal prosecution, or any other threat of injury, to be inflicted by him or by his means or procurement, shall be punished by fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding six months.

Disobedience to judges of election.

(1927) § **25**. Every person who wilfully disobeys a lawful command of a judge or board of judges of any election, given in the execution of their duty as such, at an election, is guilty of a misdemeanor.

Violence which impedes an election.

(1928) § **26**. Every person who is guilty of any riotous conduct or who causes any disturbance or breach of the peace, or uses any disorderly violence, or threats of violence, whereby any election is impeded or hindered, or whereby the lawful proceedings of the judges or canvassers at such election, in the discharge of their duty, are interfered with, is guilty of a misdemeanor.

Summary arrest.

(1929) § **27**. Whenever at an election any person refuses to

obey the lawful command of the board of judges, or by any disorderly conduct in their presence interrupts or disturbs their proceedings, they may make an order directing the sheriff, or any constable of the county, or one or more special constables to be appointed by them, to take the person so offending into custody, and detain him until the final canvass of the votes shall be completed. But such order shall not prohibit the person taken into custody from voting at the election.

Arrest is no defense to prosecution.

(1930) § **28.** The fact that any person offending against the provisions of the preceding section, was taken into custody and detained, as therein authorized, forms no defense to a prosecution for the offense committed, under any provisions of this code.

Destroying ballots or boxes.

(1931) § **29.** Every person who wilfully breaks or destroys, on the day of any election, or before the canvass is completed, any ballot box used, or intended to be used at such election, or defaces, injures, destroys or conceals any ballot which has been deposited in any ballot box at an election, and has not already been counted or canvassed, or any poll list used, or intended to be used at such election, is guilty of a felony.

False poll list.

(1932) § **30.** Every clerk of the poll at any election who wilfully keeps a false poll list, or knowingly inserts in his poll list any false statement, is guilty of a misdemeanor.

Misconduct of judges.

(1933) § **31.** Every judge of an election who wilfully excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election, or who wilfully receives a vote from any person who has been duly challenged in relation to his right to vote at such election, without exacting from such person such oath or other proof of qualification as may be required by law, or who wilfully omits to challenge any person offering to vote whom he knows or suspects not to be duly entitled to vote, and who has not been challenged by any other person, is guilty of a misdemeanor.

Falsely canvassing or certifying votes.

(1934) § **32.** Every judge of any election, member of any board of canvassers, messenger or other officer authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election, who wilfully makes any false canvass of such votes, or makes, signs, publishes or delivers any false return of such election, knowing the same to be false, or wilfully defaces, destroys or conceals any statement or certificate entrusted to his care, is guilty of a misdemeanor.

Bribing officer of election.

(1935) § **33.** Every person who gives or offers a bribe to any judge, clerk, canvasser, or other officer of an election, as a consideration for some act done or admitted to be done contrary to his official duty in relation to such election, shall be punished by fine not exceeding five hundred dollars, and imprisonment in the county jail not exceeding six months.

Disfranchisement

(1936) § **34.** Any person guilty of either of the offenses mentioned in the first and second sections of this chapter, shall thereafter be forever disfranchised and rendered ineligible to any office of trust or profit within this Territory, including that of delegate to Congress.

Witness not excused from testifying.

(1937) § **35**. No person shall be excused from testifying upon a prosecution for any offense mentioned in this chapter upon the ground that his testimony might tend to criminate himself, but any person testifying against the other party shall thereafter be exempt from punishment for such offense mentioned in said section.

Election defined.

(1938) § **36**. The word "election," as used in this chapter, designates only elections had within this Territory for the purpose of enabling electors, as such, to choose some public officer or officers under the laws of this Territory, or of the United States.

Irregularites in election no defense.

(1939) § **37**. Irregularities or defects in the mode of noticing, convening, holding or conducting an election authorized by law, form no defense to a prosecution for a violation of the provisions of this article.

Not apply to legal interference.

(1940) § **38**. Nothing in this chapter shall be construed to authorize the punishment of any person who, by authority of law, may interfere to prevent or regulate an election which has been unlawfully noticed or convened, or is being, or is about to be unlawfully conducted.

Election for determination of questions.

(1941) § **39**. Every act which by the provisions of this article is made criminal when committed with reference to the election of a candidate, is equally criminal when committed with reference to the determination of a question submitted to electors to be decided by votes cast at an election.

Good faith a defense.

(1942) § **40**. Upon any prosecution for procuring, offering, or casting an illegal vote, the accused may give in evidence any facts tending to show that he honestly believed upon good reason that the vote complained of was a lawful one; and the jury may take such facts into consideration in determining whether the acts complained of were knowingly done or not.

Selling liquor on election day.

(1943) § **41**. Every person who sells, gives away or disposes of any intoxicating liquors as a beverage, on the day of any general election, or special or local election, in the town, city or county where held, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail not to exceed twenty days, and by fine not exceeding one hundred and not less than fifty dollars, such fine to go to the county general fund.

ARTICLE 6.—OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE TERRITORY.

SECTION.		SECTION.	
1.	Usurping office.	10.	Fees for service not rendered.
2.	Acts of officer *de facto*.	11.	Taking unlawful reward.
3.	Falsely assuming office.	12.	Buying appointments to office.
4.	Giving or offering bribes to executive officer.	13	Selling appointments to office.
5.	Asking or receiving bribes.	14.	Reward for deputation.
6	Preventing officer's duty.	15.	Unlawful deputation is void.
7.	Resisting executive officer.	16.	Exercising functions of office after term expires.
8.	Taking excessive fees.	17.	Refusal to surrender books.
9.	Taking reward for omitting or delaying official acts.	18.	Administrative officers.

Usurping office.

(1944) § **1.** Every person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his right to the office.

Act of officer de facto.

(1945) § **2.** The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

Falsely assuming office.

(1946) § **3.** Every person who shall falsely assume or pretend to be any Territorial, county or township, city or town officer, or who shall knowingly take upon himself to act as such or to require any person to act as such, or assist him in any matter pertaining to such office, shall be punished by imprisonment in the county jail not more than two years nor less than three months, and by fine not exceeding five hundred nor less than fifty dollars.

Giving or offering bribes to executive officer.

(1947) § **4.** Every person who gives or offers any bribe to any executive officer of this Territory, with intent to influence him in respect to any act, decision, vote, opinion, or other proceedings of such officer, is punishable by imprisonment in the Territorial prison, not exceeding ten years, or by a fine not exceeding five thousand dollars; or both.

Asking or receiving bribes.

(1948) § **5.** Every executive officer or person elected or appointed to executive office who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the Territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and in addition thereto, forfeits his office and is forever disqualified from holding any public office under this Territory.

Preventing officer's duty.

(1949) § **6.** Every person who attempts, by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor.

Resisting executive officer.

(1950) § **7.** Every person who knowingly resists, by the use of force or violence, any executive officer in the performance of his duty, is guilty of a misdemeanor.

Taking excessive fees.

(1951) § **8.** Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Taking reward for omitting or delaying official acts.

(1952) § **9.** Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

Fees for service not rendered

(1953) § **10.** Every executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

Taking unlawful reward.

(1954) § **11.** Every officer of this Territory who asks or receives any compensation, fee or reward of any kind for any service rendered or expense incurred in procuring from the governor of this Territory a demand upon the executive authority of a state or territory of the United States, or of a foreign government, for the surrender of a fugitive from justice, or of any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this Territory or for detaining him therein, except upon an employment by the governor of this Territory, and upon an account duly audited and paid out of the Territorial treasury, is guilty of a misdemeanor.

Buying appointments to office.

(1955) § **12.** Every person who gives or agrees, or offers to give any gratuity or reward in consideration that himself or any other person shall be appointed to any public office, or shall be permitted to, or to exercise, perform or discharge the prerogatives or duties of any office, is punishable by imprisonment in the county jail not less than six months nor more than two years, or by a fine of not less than two hundred dollars or more than one thousand dollars, or both.

Selling appointments to office.

(1956) § **13.** Every person who, directly or indirectly, asks or receives or promises to receive any gratuity or reward, or any promise of a gratuity or reward for appointing another person or procuring for another person an appointment to any public office or any clerkship, deputation or other subordinate position in any public office, is punishable by imprisonment in the county jail not less than six months nor more than two years, or by a fine not less than two hundred dollars nor more than one thousand dollars, or both.

Reward for deputation.

(1957) § **14.** Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise, perform or discharge any of the prerogatives or duties of his office, is punishable by imprisonment in the county jail not less than six months nor more than two years, and by a fine of not less than two hundred dollars or more than one thousand dollars; and in addition thereto he forfeits his office.

Unlawful deputation is void.

(1958) § **15.** Every grant or deputation made contrary to the provisions of the two preceding sections is void; but official acts done before a conviction for any offense prohibited by those sections, shall not be deemed invalid in consequence of the invalidity of such grant or deputation.

Exercising functions of office after term expires.

(1959) § **16.** Every person who having been an executive officer wilfully exercises any of the functions of his office after his term of office has expired and a successor has been duly elected or appointed, and has qualified in his place, and he has notice thereof, is guilty of a misdemeanor.

Refusal to surrender books

(1960) § **17.** Every person who having been an executive officer of this Territory, wrongfully refuses to surrender the official seal or any of the books and papers appertaining to his office, to his successor, who has been duly elected or appointed, and has duly qualified, and has demanded the surrender of the books and papers of such office is guilty of a misdemeanor.

(1961) § **18.** The various provisions of this chapter which relate to executive officers apply in relation to administrative officers in the same manner as if administrative aud executive officer were both mentioned together. Administrative officers.

ARTICLE 7.—OF CRIMES AGAINST THE LEGISLATIVE POWER.

SECTION.
1. Preventing meeting of legislature.
2. Disturbing the legislature.
3. Compelling adjournment.
4. Intimidating members of legislature.
5. Compelling house to perform or omit act.
6. Altering draft of bill.

ARTICLE.
7. Altering engrossed copy of bill.
8. Giving bribes to members.
9. Receiving bribes bv members.
10. Witness refusing to attend.
11. Witness refusing to testify.
12. Member's forfeiture of office.

Preventing meetings of legislature.

(1962) § **1.** Every person who wilfully and by force or fraud prevents the legislature of this Territory or either of the houses composing it; or any of the members thereof, from meeting or organizing, is punishable by imprisonment in the Territorial prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or both.

Disturbing the legislature.

(1963) § **2.** Every person who wilfully disturbs the legislature of this Territory, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

Compelling adjournment of legislature.

(1964) § **3.** Every person who wilfully and by force or fraud compels or attempts to compel the Legislature of this Territory, or either of the houses composing it, to adjourn or disperse, is punishable by imprisonment in the Territorial prison not less than five nor more than ten years, or by fine of not less than five hundred dollars, nor more than two thousand dollars, or both.

Intimidating member of legislature.

(1965) § **4.** Every person who wilfully, by intimidation or otherwise, prevents any member of the Legislature of this Territory from attending any session of the house of which he is a member, or of any committee thereof, or from giving his vote upon any question which may come before such house or from performing any other official act, is guilty of a misdemeanor.

Compelling house to perform or omit act.

(1966) § **5.** Every person who wilfully compels or attempts to compel either of the houses composing the Legislature of this Territory to pass, amend or reject any bill or resolution, or to grant or refuse any petition, or to perform or omit to perform any other official act, is punishable by imprisonment in the territorial prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or both.

Altering draft of bill

(1967) § **6.** Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of a felony.

Altering engrossed copy of bill.

(1968) § **7.** Every person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the Legislature of this Territory, with intent to procure it to be approved by the Governor or certified by the Secretary of the Territory, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislature, is guilty of felony.

Giving bribes to members.

(1969) § **8.** Every person who gives or offers to give a bribe to any member of the Legislature, or attempts directly or indirectly, by menace, deceit, suppression of truth or any other corrupt means, to influence a member in giving or withholding his vote, or in not attending the house of which he is a member, or any committee thereof, is punishable by imprisonment in the Territorial prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

Receiving bribes by members.

(1970) § **9.** Every member of either of the houses composing the Legislature of this Territory, who asks, receives or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives, or offers or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in the Territorial prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

Witness refusing to attend.

(1971) § **10.** Every person who, being duly summoned to attend as a witness before either house of the legislature or any committee thereof authorized to summon witnesses, refuses or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor.

Witness refusing to testify.

(1972) § **11.** Every person who, being present before either house of the legislature or any committee thereof authorized to summons witnesses, wilfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

Members forfeiture of office.

(1973) § **12.** The conviction of a member of the legislature of either of the crimes defined in this chapter, involves as a consequence, in addition to the punishment prescribed by this code, a forfeiture of his office, and disqualifies him from ever afterwards holding any office under this Territory.

ARTICLE 8.—OF CRIMES AGAINST PUBLIC JUSTICE, BRIBERY AND CORRUPTION.

SECTION.		SECTION.	
1.	Bribes to judges, jurors and referees.	5.	Accepting gifts from parties.
2.	Receiving bribes by judicial officers.	6.	Gifts defined.
3.	Receiving bribes by jurors and referees.	7.	Attempts to influence jurors.
4.	Misconduct of jurors.	8.	Drawing jurors fraudulently.
		9.	Misconduct by officers of the jury.

Bribes to judges, jurors and referees.

(1974) § **1.** Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, umpire or assessor, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the Territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

Receiving bribes by judicial officers.

(1975) § **2.** Every judicial officer of this Territory who asks, receives, or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be thereby influenced, is punishable by imprisonment in the Territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this Territory.

Receiving bribes by jurors and referees.

(1976) § **3.** Every juror, referee, arbitrator, umpire or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision. shall be thereby influenced, is guilty of felony.

Misconduct by jurors.

(1977) § **4.** Every juror or person drawn or summoned as a juror, or chosen arbitrator, or umpire, or appointed referee, who either:

First. Makes any promise or agreement to give a verdict for or against any party; or,

Second. Wilfully permits any communication to be made to him, or receives any book, paper, instrument, or information relative to any cause pending before him, except according to the regular course of proceeding upon the trial of such cause, is guilty of a misdemeanor.

Accepting gifts from parties.

(1978) § **5.** Every judicial officer, juror, referee, arbitrator or umpire, who accepts any gift from any person, knowing him to be a party in interest or the attorney or counsel of any party in interest to any action or proceeding then pending or about to be brought before him, is guilty of a misdemeanor.

Gifts defined.

(1979) § **6.** The word "gift" in the foregoing section shall not be taken to include property received by inheritance, by will or by gift in view of death.

Attempts to influence jurors.

(1980) § **7.** Every person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen an arbitrator or appointed a referee, in respect to his verdict, or decision of any cause or matter pending, or about to be brought before him, either:

First. By means of any communication oral or written had with him, except in the regular course of proceedings upon the trial of the cause;

Second. By means of any book, paper, or instrument exhib-

ited otherwise than in the regular course of proceedings upon the trial of cause:

Third. By means of any threat or intimidation;

Fourth. By means of any assurance or promise of any pecuniary or other advantage; or,

Fifth. By publishing any statement, argument or observation relating to the cause,

Is guilty of a misdemeanor.

Drawing jurors fraudulently

(1981) § **8.** Every person authorized by law to assist at the drawing of any jurors to attend any court, who wilfully puts or consents to the putting upon any list of jurors as having been drawn, any name which shall not have been drawn for that purpose in the manner prescribed by law; or, who omits to place on such list any name that shall have been drawn in the manner prescribed by law; or, who signs or certifies any list of jurors as having been drawn which was not drawn according to law; or, who is guilty of any other unfair, partial or improper conduct in the drawing of any such list of jurors, is guilty of a misdemeanor.

Misconduct by officers of jury.

(1982) § **9.** Every officer to whose charge any juror is committed by any court or magistrate, who negligently or wilfully permits them, or any one of them, either:

First. To receive any communication from any person;

Second. To make any communication to any person.

Third. To obtain or receive any book or paper or refreshment; or,

Fourth. To leave the jury room without the leave of such court or magistrate first obtained,

Is guilty of a misdemeanor.

ARTICLE 9.—OF RESCUES.

SECTION.
1. Rescuing prisoners.
SECTION.
2. Retaking goods from custody.

Rescuing prisoners.

(1983) § **1.** Every person who by force or fraud rescues or attempts to rescue, or aids another person in rescuing or in attempting to rescue any prisoner from any officer or other person having him in lawful custody, is punishable as follows:

First. If such prisoner was in custody upon a charge of conviction of felony, by imprisonment in the Territorial prison for not less than ten years.

Second. If such prisoner was in custody otherwise than upon a charge or conviction of felony, by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Retaking goods from custody.

(1984) § **2.** Every person who wilfully injures or destroys, takes or attempts to take, or assists any other person in taking or attempting to take from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

ARTICLE 10.—OF ESCAPES, AND AIDING THEREIN. Chap. 25.

SECTION.
1. Re-arrest of escaped prisoners.
2. Escape from territorial prison.
3. Attempt to escape.
4. Escape from other prison.
5. Attempt to escape from other prison.
6. Assisting prisoners to escape.
7. Conveying into prison things to aid escape.
8. Concealing escaped prisoner.
9. Assisting escape from officer.
10. Territorial prison defined.
11. Prisoner defined.

Re-arrest of escaped prisoners.

(1985) § **1**. Every prisoner confined upon conviction for a criminal offense, who escapes from prison, may be pursued, re-taken and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he is re-taken, and he shall remain so imprisoned until tried for such escape, or discharged on a failure to prosecute therefor.

Escape from territorial prison.

(1986) § **2**. Every prisoner confined in the Territorial prison, for a term less than for life, who by force or fraud escapes therefrom, is punishable by imprisonment in such prison for a term not exceeding five years, to commence from the expiration of the original term of his imprisonment.

Attempt to escape.

(1987) § **3**. Every prisoner confined in the Territorial prison for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of felony.

Escape from other prison.

(1988) § **4**. Every prisoner confined in any other than the Territorial prison, who by force or fraud escapes therefrom, is punishable by imprisonment in the Territorial prison not exceeding two years, or in a county jail not exceeding one year, to commence from the expiration of the original term of his imprisonment.

Attempt to escape from prison.

(1989) § **5**. Every prisoner confined in any other prison than the Territorial prison, who attempts by force or fraud, although unsuccessfully, to escape therefrom, is punishable by imprisonment in a county jail not exceeding one year, to commence from the expiration of the original term of his imprisonment.

Assisting prisoner to escape.

(1990) § **6**. Every person who wilfully by any means whatever, assists any prisoner confined in any prison to escape therefrom, is punishable as follows:

First. If such prisoner was confined upon a charge or conviction of felony, by imprisonment in the Territorial prison not exceeding ten years.

Second. If such prisoner was confined otherwise than upon a charge or conviction of felony, by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both.

Carrying into prison things to aid escape.

(1991) § **7**. Every person who carries or sends into any prison anything useful to aid any prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as follows:

First. If such prisoner was confined upon any charge or conviction of felony, by imprisonment in the Territorial prison not exceeding ten years.

Second. If such prisoner was confined otherwise than upon a charge or conviction of felony, by imprisonment in the county jail not exceeding one year, or by a fine of five hundred dollars, or both.

Concealing escaped prisoner.

(1992) § **8.** Every person who wilfully and knowingly conceals any prisoner, who having been confined in prison upon a charge or conviction of misdemeanor, has escaped therefrom, is guilty of a misdemeanor.

Assisting escape from officer.

(1993) § **9.** Every person who wilfully assists any prisoner in escaping or attempting to escape from the custody of any officer or person having the lawful charge of such prisoner under any process of law or under any lawful arrest, is guilty of a misdemeanor.

"Territorial prison" defined.

(1994) § **10.** The term "Territorial Prison" or prison as used in the penal code includes Territorial prisons, also any other prison in any other territory or state in which this Territory has the right by contract or otherwise, to incarcerate persons convicted of crime in this Territory, also county jails and every place designated by law for the keeping of persons held in custody under process of law or under any lawful arrest. In cases where incarceration in the penitentiary or in the Territorial prison is provided as a penalty for any offense it shall be held to mean incarceration in either the Territorial prison or in any prison in any other state or territory in which this Territory has the right by contract or otherwise to incarcerate persons so convicted.

Prisoner defined.

(1995) § **11.** The term prisoner in this chapter includes every person held in custody under process of law issued from a court of competent jurisdiction, whether civil or criminal, or under any lawful arrest.

ARTICLE 11.—FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

SECTION.
1. Larceny or destruction of records by clerk or officer.
2. Same by other person.
3. Offering forged or false iustruments for record.

Larceny or destruction of records by clerk or officer.

(1996) § **1.** Every clerk, register or other officer having the custody of any record, maps or book, or of any paper or proceeding of any court of justice: filed or deposited in any public office, who is guilty of stealing, wilfully destroying, mutilating, defacing, altering or falsifying or unlawfully removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the Territorial prison not exceeding five years, and in addition thereto forfeits his office.

Larceny by other persons.

(1997) § **2.** Every person not an officer such as is mentioned in the last section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the Territorial prison not exceeding five years, or in a county jail not exceeding oue year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

(1998) § **3.** Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this Territory, which instrument, if genuine, might be filed or registered or recorded under any law of this Territory or of the United States, is guilty of felony. Offering forged or false instruments for record.

ARTICLE 12.—PERJURY AND SUBORNATION OF PERJURY.

SECTION.
1. Perjury defined.
2. Oath defined.
3. Oath of office.
4. Irregularities in administering oath no defense.
5. Incompetency of witness no defense.
6. Materiality of testimony no defense.
7. Making depositions.
8. False statements.

SCETION.
9. Punishment of perjury.
10. Summary committal of witness.
11. Witness bound over to appear.
12. Documents may be retained.
13. Subornation of perjury defined.
14. Punishment for subornation of perjury.
15. Person convicted of perjury incompetent as witness.

(1999) § **1.** Every person who, having taken an oath that he will testify, declare, depose or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, wilfully and contrary to such oath, states any material matter which he knows to be false, is guilty of perjury. Perjury defined.

(2000) § **2.** The term "oath", as used in the last section, includes an affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law. Oath defined.

(2001) § **3.** So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the previous sections. Oath of office.

(2002) § **4.** It is no defence to a prosecution for perjury that the oath was administered or taken in an irregular manner. Irregularities in administration of oath.

(2003) § **5.** It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was required to give such testimony or made such deposition or certificate. Incompetency of witness no defense.

(2004) § **6.** It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding. Materiality of testimony not necessary.

(2005) § **7.** The making of a deposition or certificate is deemed to be complete, within the provisions of this article, from the time when it is delivered by the accused to any other person with the intent that it be uttered or published as true. Making depositions.

(2006) § **8.** An unqualified statement of that which one does not know to be true is equivolent to a statement of that which one knows to be false. False statement.

(2007) § **9.** Perjury is punishable by imprisonment in the Terrial prison as follows: Punishment for perjury.

First. When committed on the trial of an indictment for felony, by imprisonment not less than ten years nor more than twenty years.

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Second. When committed on any other trial or proceeding in a court of justice, by imprisonment for not less than five nor more than ten years.

Third. In all other cases by imprisonment not more than five years.

Summary committal of witness.

(2008) § **10.** Whenever it appears probable in any court of record, that any person who has testified in any action or proceeding in such court has committed perjury, such court must immediately commit such person by an order or process for that purpose to prison or take a recognizance with sureties for his appearance and answering to an indictment for perjury.

Witness bound over to appear

(2009) § **11.** Such court shall thereupon bind over the witnesses to establish such perjury to appear at the proper court to testify before grand jury, and upon the trial, in case an indictment is found for such perjury, and shall also cause immediate notice of such commitment or recognizance, with the names of the witnesses so bound over, to be given to the district attorney of the county.

Documents may be retained.

(2010) § **12.** If, upon the hearing of such action or proceeding in which such perjury has probably been committed, any papers or documents produced by either party shall be deemed necessary to be used on the prosecution for such perjury, the court may by order detain such papers or documents from the party producing them, and direct them to be delivered to the district attorney.

Subornatiou of perjury defined.

(2011) § **13.** Every person who wilfully procures another person to commit any perjury, is guilty of subornation of perjury.

Punishment of subornation of perjury.

(2012) § **14.** Every person guilty of subornation of perjury is punishable in the same manner as he would be if personally guilty of the perjury so procured.

Person convicted of perjury incompetent as witness.

(2013) § **15.** No person who has been convicted of perjury, or of subornation of perjury, shall thereafter be received as a witness in any action, proceeding or matter whatever upon his own behalf; nor in any action or proceeding between adverse parties, against any person who shall object thereto, until the judgment against him has been reversed. But where such person has been actually received as a witness contrary to the provisions of this section, his incompetency shall not prejudice the rights, innocently acquired, of any other person claiming under the proceeding in which such person was so received.

ARTICLE 13.—FALSIFYING EVIDENCE.

SECTION.
1. Offering false evidence.
2. Deceiving a witness.
3. Preparing false evidence.
4. Destroying evidence.
5. Preventing witness from attending court
6. Bribing witness.

Offering false evidence.

(2014) § **1.** Every person who, upon any trial, proceeding, inquiry or investigation whatever, authorized by law, offers in evidence, as genuine, any book, paper, document, record, or other

instrument in writing, knowing the same to have been forged, or fraudulently altered, is punishable in the same manner as the forging or false alteration of such instrument is made punishable by the provisions of this code,

Deceiving a witness.

(2015) § **2**. Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

Preparing false evidence.

(2016) § **3**. Every person guilty of falsely preparing any book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced as genuine, upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of felony.

Destroying evidence.

(2017) § **4**. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry or investigation whatever, authorized by law, wilfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.

Preventing witness from attending court.

(2018) § **5**. Every person who wilfully prevents or dissuades any person who has been duly summoned or subpœnaed as a witness from attending pursuant to the command of the summons or subpœna is guilty of a felony.

Bribing witness.

(2019) § **6**. Every person who gives or offers or promises to give to any witness or person about to be called as a witness in any matter whatever, including contests before United States land officers or townsite commissioners, any bribe upon any understanding or agreement that the testimony of such witness shall be influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony is guilty of a felony, but if the offer, promise, or bribe is in any way to induce the witness to swear falsely, then it shall be held to be subornation of perjury.

SECTION.
1. Injury to records; embezzlement by officer.
2. Permitting escapes.
3. Refusing to receive prisoners.
4. Delaying to take prisoners before magistrate.
5. Arrest without lawful authority.
6. Misconduct in executing search warrant.
7. Refusing to aid officer.
8. Refusing to make arrest.
9. Resisting execution of process.
10. Obstructing officers in performance of duty.
11. Extrajudicial oaths.
12. Administering same.
13. Compounding crimes.
14. Compounding prosecutions.
15. Attempt to intimidate officers.
16. Suppressing evidence.
17. Buying lands in suit.
18. Buying pretended titles.
19. Mortgage when not prohibited.
20. Common barratry defined.
21. Same a misdemeanor.
22. Proof required.
23. Interest of accused no defense.
24. Buying demands for suit by attorney.
25. Same by justice or constable.
26. Loans on claims for collection.
27. Forfeiture of office.
SECTION.
28. Receiving claims in payment of debt.
29. Application of preceding section.
30. Privilege of witnesses.
31. Criminal contempts.
32. Application to stay trial.
33. Grand juror acting after challenge allowed.
34. Disclosure of depositions.
35. Disclosure of depositions returned by grand jury.
36. Fraudulent concealment of property.
37. Racing near a court.
38. Selling liquor in court house, etc.
39. Misconduct by attorneys.
40. Attorney permitting other person to use his name.
41. When such use is lawful.
42. Fraudulent production of infant.
43. Substituting child.
44. Omission of duty by officer.
45. Prohibited act.
46. Disclosing indictment.
47. Disclosing proceedings of grand jury.
48. Prosecuting suit or bringing action in false name.
49. Maliciously procuring search.
50. Communicating with a convict.
51. Neglect to canvass election returns.
52. False certificate.

Injury to records and embezzlement by officer.

(2019) § **1.** Every sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, is guilty of a felony who either:

First. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office, or,

Second. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property entrusted to him in virtue of his office,

Permitting escapes.

(2020) § **2.** Every sheriff, coroner, clerk of a court, constable or other ministerial officer and every deputy or subordinate of any ministerial officer, who either:

First. Wilfully or carelessly allows any person lawfully held by him in custody to escape or go at large, except as may be permitted by law; or,

Second. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,

Third. Commits any unlawful act tending to hinder justice, is guilty of a felony.

Refusing to receive prisoners.

(2021) § **3.** Every officer who, in violation of a duty imposed upon him by law as such officer to receive into his custody any person as a prisoner, wilfully neglects or refuses so to receive such person into his custody, is guilty of a misdemeanor.

(2022) § **4.** Every public officer or other person having arrested any person upon any criminal charge, who wilfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor. Delaying to take before magistrate.

(2023) § **5.** Every public officer or person pretending to be a public officer, who under the pretense or color of any process or other legal authority, arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses anyone of any lands or tenements without due and legal process, is guilty of a misdemeanor. Arrest without lawful authority.

(2024) § **6.** Every peace officer who, in executing a search warrant, wilfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor. Misconduct in executing a search warrant.

(2025) § **7.** Every person who, after having been lawfully commanded to aid any officer in arresting any person or in retaking any person who has escaped from legal custody, or in executing any legal process, wilfully neglects or refuses to aid such officer, is guilty of a misdemeanor. Refusing to aid officer.

(2026) § **8.** Every person who, after having been lawfully commanded by any magistrate to arrest another person, wilfully neglects or refuses so to do, is guilty of a misdemeanor. Refusing to make arrest.

(2027) § **9.** Every person who, after proclamation issued by the Governor declaring any county to be in a state of insurrection, resists or aids in resisting the execution of process in the county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody, or confinement, or who resists or aids in resisting a force ordered out by the Governor to quell or suppress an insurrection, is punishable by imprisonment in the Territorial prison for not less than two years Resisting execution of process.

(2028) § **10.** Every person who wilfully delays or obstructs any public officer in the discharge or attempt to discharge any duty of his office, is guilty of a misdemeanor. Obstructing officer in performance of duty

(2029) § **11.** Every person who takes an oath before an officer or person authorized to administer judicial oaths, except when such oath is required or authorized by law, or is required by the provisions of some contract as the basis of or in proof of a claim, or when the same has been agreed to be received by some person as proof of any fact, in the performance of any contract, obligation or duty instead of other evidence, is guilty of a misdemeanor. Extrajudicial oaths

(2030) § **12.** Every officer or other person who administers an oath to another person, or who makes and delivers any certificate that another person, has taken an oath, except when such oath is required by the provisions of some contract as a basis of or proof of a claim, or when the same has been agreed to be received by some person as proof of any fact in the performance of any contract, obligation or duty, instead of other evidence, is guilty of a misdemeanor. Administering same.

(2031 § **13.** Every person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime, or viola- Compounding crimes.

tion of statute, or to abstain from any prosecution therefor, or to withhold any evidence thereof, is punishable as follows:

First. By imprisonment in the Territorial prison not exceeding five years, or in a county jail not exceeding one year, where the crime compounded is one punishable either by death or by imprisonment in the Territorial prison for life.

Second. By imprisonment in the Territorial prison not exceeding three years, or in a county jail not exceeding six months, where the crime compounded was punishable by imprisonment in the Territorial prison for any other term than for life.

Third. By imprisonment in a county jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment, where the crime or violation of statute compounded is a crime punishable by imprisonment in a county jail, or by fine, or is a misdemeanor, or violation of statute for which a pecuniary or other penalty or forfeiture is prescribed.

Compounding prosecution.

(2032) § **14.** Every person who takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, discontinue or delay any prosecution then pending for any crime or violation of statute, or to withhold any evidence in aid thereof, is guilty of a misdemeanor.

Attempt to intimidate officers

(2033) § **15.** Every person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial or ministerial officer, to any juror, referee, arbitrator, umpire or assessor or other person authorized by law to hear or determine any controversy, with intent to induce him either to any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, is guilty of a misdemeanor.

Suppressing evidence.

(2034) § **16.** Every person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other matter or thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other matter or thing which might be evidence in such suit or proceediug, or prevent any person being cognizant of any fact material thereto from producing or disclosing the same, if guilty of a misdemeanor.

Buying lands in suit.

(2035) § **17.** Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing the pendency of such suit, and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor.

Buying pretended titles.

(2036) § **18.** Every person who buys or sells, or in any manner procures, or makes or takes any promise or covenant to convey any pretended right or title to any lands or tenements, unless the grantor thereof, or the person making such promise or

covenant has been in possession, or he and those by whom he claims have been in possession of the same, or of the reversion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such grant, conveyance, sale, promise or covenant made, is guilty of a misdemeanor.

Mortgage not prohibited.

(2037) § **19**. The two last sections shall not be construed to prevent any person having a just title to lands, upon which there shall be an adverse possession, from executing a mortgage upon such lands.

Common barratry defined.

(2038) § **20**. Common barratry is the practice of exciting groundless judicial proceedings.

A misdemeanor.

(2039) § **21**. Common barratry is a misdemeanor.

Proof required.

(2040) § **22**. No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law, in at least three instances, and with a corrupt or malicious intent to vex and annoy.

Interest of accused no defense

(2041) § **23**. Upon prosecution for common barratry the fact that the accused was himself a party in interest or upon the record to any proceedings at law complained, of is not a defense.

Buying demands for suit by attorney.

(2042) § **24**. Every attorney who either directly or indirectly buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon is guilty of a misdemeanor. Any attorney who in any proceeding before any court of a justice of the peace or mayor or police judge or other inferior court in which he appears as attorney, wilfully misstates any proposition or seeks to mislead the court in any matter of law is guilty of a misdemeanor and on any trial therefor the Territory shall only be held to prove to the court that the cause was pending, that the defendant appeared as an attorney in the action and showing what the legal statement was, wherein it is not the law. If the defense be that the act was not wilful the burden shall be on the defendant to prove that he did not know that there was error in his statement of the law.

Same by justice or constable.

(2043) § **25**. Every justice of the peace and every constable, who, directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, for the purpose of commencing any suit thereon before a justice, is guilty of a misdemeanor.

Loans on claims for collection.

(2044) § **26**. Every attorney, justice of the peace or constable, who, directly or indirectly, lends or advances any money or property, or agrees for or procures any loan or advance, to any person, as a consideration for or inducement toward committing any evidence of debt or thing in action to such attorney, justice, constable, or any other person, for collection, is guilty of a misdemeanor.

Forfeiture of office.

(2045) § **27**. Every person convicted of a violation of either of the three preceding sections, in addition to the punishment by fine and imprisonment, prescribed therefor by this chapter, forfeits his office.

Receiving claims in payment of debt.

(2046) § **28**. Nothing in the four preceding sections shall be construed to prohibit the receiving in payment of any evidence of debt or thing in action for any estate, real or personal, or for any

services of any attorney actually rendered, or for a debt antecedently contracted, or the buying or receiving any evidence of debt or the thing in action for the purpose of remittance, and without any intent to violate the preceding section.

Application of preceding section.

(2047) § **29**. The provisions of the foregoing sections relating to the buying of claims by an attorney with intent to prosecute them, or to the lending or advancing money by an attorney in consideration of a claim being delivered for collection, shall apply to every case of such buying a claim, or lending or advancing money by any person prosecuting a suit or demanding in person.

Privilege of witnesses,

(2048) § **30**. No person shall be excused from testifying in any civil action, to any facts showing that an evidence of debt or thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon any criminal prosecution.

Criminal contempts,

(2049) § **31**. Every person guilty of any contempt of court of either of the following kinds, is guilty of a misdemeanor:

First. Disorderly, contemptuous or insolent behavior, committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

Second. Behavior of the like character, committed in the presence of any referee or referees, while actually sitting for the trial of a cause, or upon any inquest or other proceeding authorized by law.

Third. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

Fourth. Wilful disobedience of any process or order lawfully issued by any court.

Fifth. Resistance wilfully offered by any person to the lawful order or process of any court.

Sixth. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

Seventh. The publication of a false or grossly inaccurate report of the proceedings of any court. But no person can be punished, as for a contempt, in publishing a true, full and fair report of any trial, argument, decision or proceeding had in court.

Application to stay trial

(2050) § **32**. Every attorney or counsellor at law who, knowing that an application has been made for an order staying the trial of an indictment, to a judge authorized to grant the same, and has been denied, without leave reserved to renew it, makes an application to another judge to say the same trial, is guilty of a misdemeanor.

Grand juror acting after challenge allowed.

(2051) § **33**. Every grand juror who, with knowledge of a challenge, interposed against him by a defendant, has been allowed, is present at or takes part, or attempts to take part, in the consideration of the charge against the defendant who interposed

the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor. Chap. 25.

Disclosure of depositions.

(2052) § **34.** Every magistrate, or clerk of any magistrate, who wilfully permits any deposition taken on an information or examination of a defendant before such magistrate, and remaining in the custody of such magistrate or clerk, to be inspected by any person except a judge of a court having jurisdiction of the offense, the United States attorney, the district attorney of the district and his assistants, and the defendant and his counsel, is guilty of a misdemeanor.

Disclosure of deposition returned by grand jury.

(2053) § **35.** Every clerk of any court who wilfully permits any deposition returned by any grand jury with a presentment made by them, and filed with such clerk, to be inspected by any person except the court, the deputies or assistants of such clerk, and the district attorney and his assistants, until after the arrest of the defendant, is guilty of a misdemeanor.

Fraudulent concealment of property.

(2054) § **36.** Every person who, having been called upon, by the lawful order of any court, to make a true exhibit of his real and personal effects, either:

First. Wilfully conceals any of his estate or effects, or any books or writing relative thereto; or,

Second. Wilfully omits to disclose to the court any debts or demands which he has collected, or any transfer of his property which he had made after being ordered to make an exhibit thereof, is guilty of a misdemeanor.

Racing near a court.

(2055) § **37.** Every person concerned in any racing, running, or other trial of speed between any horses or other animals, within one-half mile of the place where any court is actually sitting, is guilty of a misdemeanor.

Selling liquor in court house, etc.

(2056) § **38.** Every person who sells any spirituous or intoxicating liquor within, or brings with intent to sell, or offer or expose for sale therein, any such liquor into, either :

First. Any building established as a court house for the holding of courts of record, while any session of such court is being held therein, except in such part of such building not appropriated to the use of courts or of juries attending them, in which such sale has been authorized by a resolution of the board of county commissioners of the county ; or,

Second. Any building established as a jail or prison ; or,

Third. Any building or shed, outhouse, porch, yard, or curtilage appertaining to any building which, or any part of which, is at the time occupied or used for holding the polls at an election of any public officer of this Territory, or for canvassing votes cast at such election, is guilty of a misdemeanor.

Misconduct by attorneys.

(2057) § **39.** Every attorney who, whether as attorney or as counselor, either:

First. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

Second. Wilfully delays his client's suit, with a view to his own gain; or,

Third. Wilfully receives any money or allowance for or on ac-

count of any money which he has not laid out or become answerable for, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor by this code, he forfeits to the party injured treble damages, to be recovered in a civil action.

Attorney permitting other person to use his name.

(2058) § **40**. If any attorney knowingly permits any person not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by the next section, such attorney, and every person who shall so use his name is guilty of a misdemeanor.

In what cases such use is lawful.

(2059) § **41.** Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer board of officers or municipal corporation, on behalf of another party, the Attorney General or district attorney, or attorney of such public officer or board or corporation may permit any proceeding therein to be taken in his name by an attorney to be chosen by the party in interest.

Fraudulent production of infant.

(2060) § **42**. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate, from any person lawfully entitled thereto, is punishable by imprisonment in the Territorial prison not exceeding ten years.

Substituting child.

(2061) § **43.** Every person to whom an infant has been confided for nursing, education, or any other person, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonmcnt in the Territorial prison not exceeding seven years.

Omissions of duty by ofiicer.

(2062) § **44**. Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful omission to perform such duty where no special provisions shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Prohibitcd act.

(2063) § **45.** Where the performance of an act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor.

Disclosing indictment.

(2064) § **46**. Every grand juror, district attorney, clerk, judge, or other officer, who, excepting by issuing or in executing a warrant to arrest the defendant, wilfully discloses the fact of a presentment or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

Disclosing proceedings of grand jury.

(2065) § **47**. Every grand juror, who, except when required by a court, wilfully discloses any evidence adduced before the grand jury or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor.

Prosecuting suit or bringing action in false name.

(2066) § **48.** Every person who maliciously institutes or prosecutes any action or legal proceeding; or makes or procures any

arrest, in the name of a person who does not exist, or has not consented that it be instituted or made, is guilty of a misdemeanor.

Maliciously procuring search.

(2067) § **49**. Every person who maliciously, and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

Communicating with a convict.

(2068) § **50.** Every person who, not being authorized by law, or by a written permission from an inspector, or by the consent of the warden, communicates with any convict in the Territorial prison, or brings into or conveys out of the Territorial prison any letter or printing to or from any convict, is guilty of a misdemeanor.

Neglecting to canvass election returns.

(2069) § **51.** Every county clerk who wilfully refuses or neglects to canvass the election returns of his county, or neglects to make proper abstracts thereof and forward the same to the proper officer, as is or may be hereafter provided by law, or fails to issue certificates of election to such persons lawfully entitled thereto, is punishable by fine not exceeding one hundred dollars for each refusal or neglect.

False certificate.

(2070) § **52**. Every public officer who, being authorized by law to make or give any certificate or other writing, knowingly makes and delivers as true any such certificate or writing containing any statement which he knows to be false, is guilty of a misdemeanor.

ARTICLE 15.—CONSPIRACY.

SECTION
1 Criminal conspiracies defined.
2 Conspiracy against the peace of the territory.
SECTION.
3. Overt act necessary.

Criminal conspiracies defined.

(2071) § **1.** If two or more persons conspire, either:

First. To commit any crime; or,

Second. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or,

Third. Falsely to move or maintain any suit, action or proceeding; or,

Fourth. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which if executed, would amount to a cheat or to obtaining money or property by false pretenses; or,

Fifth. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws, they are guilty of a misdemeanor.

Conspiracy against the peace of the territory.

(2072) § **2.** If two or more persons, being out or this Territory, conspire to commit any act against the peace of this Territory, the commission or attempted commission of which, within this Territory. would be treason against the Territory, they are punishable by imprisonment in the Territorial prison not exceeding ten years.

Overt act necessary.

(2073) § **3.** No agreement to commit a felony or to commit a

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misdemeanor amounts to a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

ARTICLE 16.—SUICIDE.

SECTION.
1. Suicide defined.
2. No forfeiture for suicide.
3. Attempting suicide.
4. Aiding suicide.
5. Furnishing weapon or drug.
6. Aiding in attempting to commit suicide.
7. Incapacity to commit a crime no defense.
8. Punishment for aiding suicide.
9. Punishment for aiding attempt to commit suicide.

Suicide defined

(2074) § **1.** Suicide is the intentional taking of one's own life.

No forfeiture for suicide.

(2075) § **2.** Although suicide is deemed a grave public wrong, yet from the impossibility of reaching the successful perpetrator, no forfeiture is imposed.

Attempting suicide.

(2076) § **3.** But every person who, with intent to take his own life, commits upon himself any act dangerous to human life, or which if committed upon or toward another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide.

Aiding suicide.

(2077) § **4.** Every person who wilfully, in any manner, advises, encourages, abets, or assists another person in taking his own life, is guilty of aiding suicide.

Furnishing weapon or drug.

(2078) § **5.** Every person who wilfully furnishes another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life, is guilty of aiding suicide, if such person thereafter employs such instrnment or drug in taking his own life.

Aid in attempt to commit suicide.

(2079) § **6.** Every person who wilfully aids another in attempting to take his own life, in any manner which by the preceeding sections would have amounted to aiding suicide if the person assisted had actually taken his own life, is guilty of aiding an attempt at suicide.

Incapacity to commit suicide no defense.

(2080) § **7.** It is no defense to a prosecution for aiding suicide or aiding an attempt at suicide, that the person who committed or attempted to commit the suicide was not a person deemed capable of committing crime.

Punishment for aiding suicide.

(2081) § **8.** Every person guilty of aiding suicide is punishable by imprisonment in the Territorial prison for not less than seven years.

Punishment of attempting suicide

(2082) § **9.** Every person guilty of attempting suicide, or of aiding an attempt at suicide, is punishable by imprisonment in the Territorial prison not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

ARTICLE 17.—HOMICIDE.

SECTION.
1. Homicide defined:
2. Homicide classified.
3. What necessary to conviction.
4. Petit treason abolished.
5. Confidential or domestic relation.
6. Murder defined.
7. Design to effect death inferred.
8. Premeditation.
9. Anger or intoxication no defense.
10. Act eminently dangerous.
11. Duel without the territory.
12. Forcible taking of a mine resulting in killing.
13. Punishment of murder.
14. Manslaughter in first degree.
15 Killing an unborn quick child.
16. Procuring destruction of unborn child
17. Punishment for manslaughter in first degree.
18. Manslaughter in second degree.
19. Owner of mischievous animal.
20. Navigating vessels.
21. Persons having charge of steamboats.
22. Persons having charge of steam engine
23. Liability of physicians.
24. Person keeping gunpowder.
25. Punishment for manslaughter in second degree.
26. Excusable homicide.
27. Justifiable homicide by officer.
28. Same by other person.

(2083) § **1**. Homicide is the killing of one human being by another. Homicide defined.

(2084) § **2**. Homicide is either: Homicide classified.

First. Murder.

Second. Manslaughter.

Third. Excusable homicide; or,

Fourth. Justifiable homicide.

(2085) § **3**. No person can be convicted of murder or manslaughter, or of aiding suicide, unless the death of the person alleged to have been killed, and the fact of killing by the accused, are each established as independent facts beyond a reasonable doubt. What necessary to conviction.

(2086) § **4**. The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are deemed homicides, punishable in the manner prescribed by this article. Petit treason abolished.

(2087) **5**. § Whenever th grade or punishment of homicide is made to depend upon its having been committed under circumstances evincing a depraved mind or unusual cruelty, or in a cruel manner, the jury may take into consideration the fact that any domestic or confidential relation existed between the accused and the person killed, in determining the moral quality of the acts proved. Confidential or domestic relation.

(2088) § **6**. Homicide is murder in the following cases. Murder defined.

First. When perpetrated without authority of law, and with a premeditated design to effect the death of the person killed, or of any other human being.

Second. When perpetrated by any act imminently dangerous to others and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual.

Third. When perpetrated without any design to effect death by a person engaged in the commission of any felony.

(2089) § **7**. A design to effect death is inferred from the fact of killing, unless the circumstances raise a reasonable doubt whether such design existed. Design to effect death inferred.

(2090) § **8**. A design to effect death sufficient to constitute Premeditation

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murder, may be formed instantly before committing the act by which it is carried into execution.

Anger or intoxication no defense

(2091) § **9.** Homicide committed with a design to effect death is not the less murder because the perpetrator was in a state of anger or voluntary intoxication at the time.

Act eminently dangerous.

(2092) § **10.** Homicide perpetrated by an act eminently dangerous to others and evincing a depraved mind, regardless of human life, is not the less murder because there was no actual intent to injure others.

Duel without the territory

(2093) § **11.** Every person who, by previous appointment within this Territory, fights a duel without this Territory, and in so doing, inflicts a wound upon his antagonist, or any other person, whereof the person injured dies, and every second engaged in such duel, is guilty of murder, and may be indicted, tried and convicted in any county of the Territory.

Forcible taking of a mine resulting in killing.

(2094) § **12.** If any person or persons shall associate and agree to enter or attempt to enter by force of numbers, and the terror such numbers is calculated to inspire, or by force and violence, or by threats of violence against any person or persons in the actual possession of any lode, gulch, or placer claim, and upon such entry or attempted entry, any person or persons shall be killed, said persons and all and each of them so entering or attempting to enter, shall be deemed guilty of murder, and punished accordingly. Upon the trial of such cases, any person cognizant of such entry or attempted entry, who shall be present, and aiding, assisting, or in anywise encouraging such entry or attempted entry. shall be deemed a principal in the commission of said offense.

Punishment of murder.

(2095) § **13.** Every person convicted of murder shall suffer death, or imprisonment at hard labor in the Territorial penitentiary for life, at the discretion of the jury. Upon trial of an indictment for murder, the jury, if they find the defendant guilty. must designate in their verdict whether he shall be punished by death or imprisonment for life at hard labor, and the judgment of the court shall be in accordance therewith. But upon a plea of guilty the court shall determine the same.

Manslaughter. in the first degree defined

(2096) § **14.** Homicide is manslaughter in the first degree in the following cases:

First. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor.

Second. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon; unless it is committed under such circumstances as constitute excusable or justifiable homicide.

Third. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

Killing an unborn quick child

(2097) § **15.** The wilful killing of an unborn quick child by any injury committed upon the person of the mother of such child, and not prohibited in the next following section, is manslaughter in the first degree.

Procuring destruction of unborn child.

(2098) § **16.** Every person who administers to any woman

pregnant with a quick child, or who prescribes for such woman, or advises or procures any such woman to take any medicine, drug or substance whatever, or who uses or employs any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, is guilty in case the death of the child or of the mother is thereby produced, of manslaughter in the first degree.

Punishment for manslaughter in first degree.

(2099) § **17**. Every person guilty of manslaughter in the first degree is punishable by imprisonment in the Territorial prison for not less than four years.

Manslaughter in the second degree.

(2100) § **18**. Every killing of one human being by the act, procurement or culpable negligence of another, which, under the provisions of this chapter, is not murder, nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree.

Owner of mischievous animal.

(2101) § **19**. If the owner of a mischievous animal, knowing its propensities, wilfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances permitted, to avoid such animal, the owner is deemed guilty of manslaughter in the second degree.

Navigating vessels

(2102) § **20**. Every person navigating any vessel for gain who wilfully or negligently receives so many passengers or such a quantity of other lading on board such vessel that by means thereof such vessel sinks, or is overset or injured; and thereby any human being is drowned or otherwise killed, is guilty of manslaughter in the second degree.

Persons having charge of steamboats.

(2103) § **21**. Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers or engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates or allows to be created, such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any person is killed, is deemed guilty of manslanghter in the second degree.

Person having charge of steam engine.

(2104) § **22**. Every engineer, or other person having charge of any steam boiler, steam engine or other apparatus for generating or employing steam, employed in any manufactory, railway or other mechanical works, who wilfully or from ignorance or gross neglect creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

Liabilities of physicians.

(2105) § **23**. Every physician who being in a state of intoxication without a design to effect death, administers any poison, drug or medicine, or does any other act as such physician to another person, which produces the death of such other person, is guilty of manslaughter in the second degree.

Person keeping gunpowder.

(2106) § **24**. Every person guilty of making or keeping gunpowder or saltpeter within any city or village, in any quantity or manner such as is prohibited by law or by any ordinance of said

city or village, in consequence whereof any explosion occurs whereby any human being is killed, is guilty of manslaughter in the second degree.

Punishment for manslaughter in the second degree.

(2107) § **25.** Every person guilty of manslaughter in the second degree is punishable by imprisonment in the Territorial prison not more than four years and not less than two years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both fine and imprisonment.

Excusable homicide, what is.

(2108) § **26.** Homicide is excusable in the following cases:

First. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent.

Second. When committed by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat provided that no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner.

Justifiable homicide by officers.

(2109) § **27.** Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

First. In obedience to any judgment of a competent court; or,

Second. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or,

Third. When necessarily committed in re-taking felons who have been rescued, or who have escaped, or when necessarily committed in arresting felons fleeing from justice.

Justifiable homicide by other persons

(2110) § **28.** Homicide is also justifiable when committed by any person in either of the following cases:

First. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person is; or,

Second. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there is a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished; or,

Third. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

ARTICLE 18.—MAIMING.

SECTION.
1. Maiming defined.
2. Maiming one's self.
3. Same, to obtain alms.
4. What injury is maiming.
5. What constitutes disfigurement.
6. Design to maim inferred.
7. Premeditated reward.
8. Subsequent recovery.
9. Punishment for maiming.

(2111) § **1.** Every person who, with premeditated design to injure another, inflicts upon his person any injury which disfigures his personal appearance, or disables any member or organ of his body, or seriously diminishes his physical vigor, is guilty of maiming. Maiming defined.

(2112) § **2.** Every person who will design to disable himself from performing any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled, is guilty of maiming. Maiming one's self.

(2113) § **3.** Every person who inflicts upon himself any injury such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, to excite sympathy, or to obtain alms, or any charitable relief is guilty of maiming. Same.

(2114) § **4.** To constitute maiming it is immaterial by what means or instrument, or in what manner the injury was inflicted. What injury is maiming.

(2115) § **5.** To constitute maiming by disfigurement the injury must be such as is calculated; after healing, to attract observation. A disfigurement which can only be discovered by close inspection does not constitute maiming. What constitutes disfigurement.

(2116) § **6.** A design to injure, disfigure or disable, is inferred from the fact of inflicting an injury which is calculated to disfigure or disable, unless the circumstances raise a reasonable doubt whether such design existed. Design to maim inferred.

(2117) § **7.** A premeditated design to injure, disfigure or disable, sufficient to constitute maiming, may be formed instantly before inflicting the wound. Premeditated design.

(2118) § **8.** Where it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming shall be had; but the accused may be convicted of assault and battery, with or without a special intent, according to proof. Subsequent recovery

(2119) § **9.** Every person guilty of maiming is punishable by imprisonment in the Territorial prison not exceeding seven years, or by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both such fine and imprisonment. Punishment for maiming.

ARTICLE 19.—KIDNAPPING.

SECTION.
1. Kidnapping defined.
2. Selling services of persons.
3. Removing persons held to service.
4. Public officer granting process for removal.

(2120) § **1.** Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either: Kidnapping defined.

First. To cause such other person to be secretly confined or imprisoned in this Territory against his will; or,

Second. To cause such other person to be sent out of this Territory against his will; or,

Third. To cause such person to be sold as a slave, or in any way held to service against his will, is punishable by imprisonment in the Territorial prison not exceeding ten years. Upon any trial for a violation of this section, the consent thereto of the person kidnapped or confined, shall not be a defense, unless it appears satisfactorily to the jury, that such person was above the age of twelve years, and that such consent was not extorted by threat, or by duress.

Selling services of person.

(2121) § **2.** Every person who, within this Territory or elsewhere, sells or in any manner transfers, for any term, the services or labor of any black, mulatto, or other person of color, who has been forcibly taken or inveigled, or kidnapped from this Territory, is punishable by imprisonment in the Territorial prison not exceeding ten years.

Removing persons held to service.

(2122) § **3.** Every person claiming that he or another is entitled to the service of a person alleged to be held to labor or service in a state or territory of the United States who, except as authorized by law, takes or removes or wilfully does any act tending toward removing from this Territory any such person, is guilty of a felony, punishable by imprisonment in the Territorial prison not exceeding ten years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved.

Public officer granting process for removal.

(2123) § **4.** Every judge or other public officer of this Territory who grants or issues any warrant, certificate or other process in any proceeding for the removal from this Territory of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of positive enactment, is guilty of a misdemeanor; and in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action.

ARTICLE 20.—ATTEMPTS TO KILL.

SECTION.	SECTION.
1. Attempt to kill by administering poison.	2. Shooting and assault. 3. Other assaults with intent to kill.

Attempt to kill by administering poison.

(2124) § **1.** Every person who, with intent to kill, administers or causes or procures to be administered to another any poison which is actually taken by such other but by which death is not caused, is punishable by imprisonment in the Territorial prison not less than ten years.

Shooting and assault

(2125) § **2.** Every person who intentionally and wrongfully shoots or attempts to shoot at another with any kind of fire-arm air-gun, or other means whatever, with intent to kill any person, or who commits any assault and battery upon another by means of any deadly weapon and by such other means or force as was likely to produce death, or in resisting the execution of any legal process, is punishable by imprisonment in the Territorial prison not exceeding ten years.

Other assaults with intent to kill.

(2126) § **3.** Every person who is guilty of an assault with intent to kill any person, the punishment for which is not prescrib-

ed by the foregoing section, is punishable by imprisonment in the Territorial prison for a term not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

ARTICLE 21.—ROBBERY.

SECTION.
1. Robbery defined.
2. Force or fear employed.
3. Degree of force immaterial.
4. What fear is an element,
5. Value of property not material.
6. Taking secretly not robbery.
7. Two degrees of robbery.
8. Punishment for the first degree.
9. Punishment of second degree.
10. Robbery by two or more persons.

Robbery defined.

(2127) § **1.** Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Force or fear employed.

(2128) § **2.** To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery.

Degree of force immaterial.

(2129) § **3.** When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

What fear is an element.

(2130) § **4.** The fear which constitutes robbery may be either:

First. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed or of any relative of his, or member of his family; or,

Second. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed, at the time of the robbery.

Value of property not material.

(2131) § **5.** When property is taken under the circumstances, required to constitute robbery, the fact that the property was of trifling value does not qualify the offense.

Taking secretly not robbery.

(2132) § **6.** The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge.

Two degrees of robbery.

(2133) § **7.** Robbery, when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner, it is robbery in the second degree.

Punishment for first degree.

(2134) § **8.** Every person guilty of robbery in the first degree is punishable by imprisonment in the Territorial prison not less than ten years.

Punishment of second degree

(2135) § **9.** Every person guilty of robbery in the second degree is punishable by imprisonment in the Territorial prison not exceeding ten years.

Robbery by two or more persons.

(2136) § **10.** Whenever two or more persons conjointly commit a robbery, or where the whole number of persons conjointly committing a robbery, and persons present and aiding such robbery, amount to two or more, each and either of such persons is punishable by imprisonment for life.

ARTICLE 22.—FELONIOUS ASSAULTS.

SECTION.
1. Felonious assault.
2. Administering drug.

Other assaults with intent to commit felony.

(2137) § **1.** Every person who is guilty of an assault with intent to commit any felony, except an assault with intent to kill, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the Territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Administering drug.

(2138) § **2.** Every person guilty of administering to another any chloroform, ether, laudanum, or other intoxicating, narcotic or other anesthetic agent, with intent thereby to enable or assist himself or any other person to commit any felony, is guilty of felony.

ARTICLE 23.—DUELS AND CHALLENGES.

SECTION.
1. Duel defined.
2. Punishment for fighting duel.
3. Incapable of holding office.
4. Seconds, aids and surgeons.
5. Punishment for sending challenge.
6. Challenge defined.
7. Attempts to induce challenge.
8. Posting person for not fighting duel.
9. Leaving territory to evade laws.
10. Person may be tried, when.
11. Privilege of witnesses.

Duel defined.

(2139) § **1.** A duel is any combat, with deadly weapons, fought between two persons by previous agreement or upon a previous quarrel.

Punishment for fighting duel.

(2140) § **2.** Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the Territorial prison not exceeding ten years.

Incapable of holding office.

(2141) § **3.** Every person convicted of fighting a duel is thereafter incapable of holding or being elected or appointed to any office, place or post of trust or emolument, civil or military, under this Territory.

Seconds, aids and surgeons.

(2142) § **4.** Every person who is present at the time when any duel is fought, either as second, aid or surgeon, or who advises or gives any countenance to any duel, is punishable by imprisonment in the Territorial prison not exceeding seven years.

Punishment for sending challenges.

(2143) § **5.** Every person who challenges another to fight a duel; every person who accepts any such challenge; and every person who knowingly forwards, carries or delivers any such challenge, is punishable by imprisonment in the Territorial prison not exceeding seven years.

Challenge defined.

(2144) § **6.** Any words spoken or written, or any signs uttered or made to any person, expressing or implying or intended to express or imply a desire, request, invitation or demand, to fight a duel, or to meet for the purpose of fighting a duel, are deemed a challenge.

Attempts to induce challenge.

(2145) § **7.** Every person guilty of sending, uttering or making to another any words or signs whatever, with intent to

provoke or induce such person to give or receive any challenge to fight a duel is guilty of a misdemeanor.

Posting person for not fighting a duel.

(2146) § **8.** Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or concerning another for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

Leaving territory to evade laws.

(2147) § **9.** Every person who leaves this Territory with intent to elude any of the provisions of this article, and to commit any act, out of this Territory such as is prohibited by this article and who does any act although out of this Territory, which would be punishable by said provisions, if committed within this Territory, is punishable in the same manner as he would have been, in case such act had been committed within this Territory.

Person may be tried, when.

(2148) § **10.** Such person may be indicted and tried in any county within this Territory.

Privilege of witness.

(2149) § **11.** No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter upon grounds that his testimony might tend to convict him of crime, But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding, except in a prosecution against him for perjury committed in giving such testimony.

ARTICLE 24.—ASSAULT AND BATTERY.

SECTION.
1. Assault defined.
2. Battery defined.
3. When force is allowable.
4. Assault and battery, how punished.
5. Justices have jurisdiction.
6. Assault with dangerous weapons.

Assault defined.

(2150) § **1.** An assault is any wilful and unlawful attempt or offer, with force or violence, to do a corporal hurt to another.

Battery defined.

(2151) § **2.** A battery is any wilful and unlawful use of force or violence upon the person of another.

When force allowable.

(2152) § **3.** To use or to attempt to offer to use force or violence upon or toward the person of another is not unlawful in the following cases:

First. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.

Second. When necessarily committed by any person in arresting one who has committed any felony, and delivering him to a public officer competent to receive him in custody.

Third. When committed either by the party about to be injured, or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlawful interference with real or personal property in his lawful possession; provided the force or violence used is not more than sufficient to prevent such offense.

Fourth. When committed by a parent or the authorized agent

of any parent, or by any guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, provided restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent, or anthorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree.

Fifth. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their reqnest, in expelling from any carriage, railroad car, vessel or other vehicle, any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

Sixth. When committed by any person in preventing an idiot, lunatic, insane person or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

Assault and battery, how punished.

(2153) § **4**. Assault, or assault and battery, shall be punishable by imprisonment in a county jail not exceeding thirty days, or by a fine of not less than five dollars or more than one hundred dollars, or both, at the discretion of the court.

Justices have jurisdiction.

(2154) § **5**. Justices of the peace shall have jurisdiction to fine and imprison in all cases arising under the provisions of this act, and may try and determine the same, subject to appeal by defendant as in other cases.

Assault with dangerons weapon.

(2155) § **6**. Every person who, with intent to do bodily harm, and without justifiable or excusable cause commits any assault, upon the person of another with any sharp or dangerous weapon, or who, without such cause, shoots or attempts to shootat another, with any kind of firearm or air gun or other means whatever, with intent to injure any person, although without intent to kill such person or to commit any felony, is punishable by imprisonment in the Territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year.

ARTICLE 25.—LIBEL AND SLANDER.

SECTION.
1. Libel defined,
2. Slander defined.
3. Privileged communications.
4. Proof required in civil actions; defense, when sufficient.
5. Malice, when presumed.
6. Minimum judgment; plaintiff liable.
7. Who punishable; fine or imprisonment.
8. Proof required in criminal actions; defense, when sufficient.
9. Indictment, requirements.
10. Reading by second party not necessary.
11. Newspaper, when not liable.
12. Threats equivalent to publication.
13. Actions, how conducted.
14. Repeal of conflicting enactments.

Libel defined.

(2156) § **1.** A libel is the malicious defamation of a person made public by printing, writing, sign picture, representation or effigy tending to provoke him to wrath or subject him to public hatred, contempt or ridicule, or to deprive him of the benefit of public confidence and social intercourse, or injure him in his business, or any malicious defamation made public as aforesaid designed to blacken or vilify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives or friends.

Slander defined.

(2157) § **2.** Slander is a false and unprivileged publication, other than libel, which: *First*, Charges any person with crime or having been indicted, convicted or punished for crime: *Second*, Imputes in him the present existence of an infectious, contagious, or loathsome desease: *Third*, Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which his office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profits: *Fourth*, Imputes to him impotence or want of chastity: *Fifth*, Which by natural consequence causes actual damage.

Privileged communications.

(2158) § **3.** A privileged communication is one made: *First*, In any legislative or judicial proceedings, or in any other proceeding authorized by law: *Second*, In the proper discharge of an official duty: *Third*, By a fair and true report without malice of a judicial, legislative, official or other proceeding, or of anything said in the course thereof: *Fourth*, In all cases of such communications made to a person other than a near relative, or ward, or between persons related in business, malice shall be presumed from the communication unless the facts and circumstances and the testimony rebut the same.

Civil action, proof.

(2159) § **4.** In all civil actions to recover damages for libel or slander, it shall be sufficient to state generally what the defamatory matter was, and that it was published or spoken of the plaintiff, and to allege any general or special damage caused thereby, and the plaintiff to recover shall only be held to prove that the matter was published or spoken by the defendant concerning the plaintiff. As a defense thereto, the defendant may deny and offer evidence to disprove the charges made, or he may prove that the matter charged as defamatory was true, and in addition thereto, that it was published or spoken under such circumstances as to render it a privileged communication.

Malice.

(2160) § **5.** An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Minimum judgment.

(2161) § **6.** If there be a verdict by a a jury or finding by the court in favor of the plaintiff, the verdict and judgment shall in no case be less than one hundred dollars and costs, and may be for a greater sum if the proof justifies the same. And if there be a verdict in favor of the defendant, and the jury find that the action was malicious or without reasonable provocation, judgment shall be rendered against the plaintiff and in favor of the defendant for his costs, including an attorney's fee of one hundred dollars.

Chap. 25.

Who punishable.

(2162) § **7.** Every person who makes, composes, dictates or procures the same to be done; or who wilfully publishes or circulates such libel; or in any way knowingly or wilfully aids or assists in making, publishing, or circulating the same, shall be punishable by imprisonment in the county jail not more than one year or by a fine not exceeding one thousand dollars, or both at the discretion of the judge; and moreover, be civilly liable to the party injured: *Provided, however*, That if said libel is published in a newspaper or periodical having a general circulation, the person so offending shall be punished by imprisonment in the penitentiary not less than one year or more than three years.

Criminal action, proof.

(2163) § **8.** In all criminal prosecutions or indictments for libel the truth thereof may be given in evidence to the jury, and if it be made to appear by the defendant that the matter charged as libelous was true, and in addition thereto was published with good motives, and for justifiable ends, or was a privileged communication, the defendant shall be acquitted.

Indictment, requirments.

(2164) § **9.** In criminal prosecutions for libel, the indictment or information need not set forth any extrinsic facts for the purpose of showing the application to the party libelled of the defamatory matter upon which the indictment is founded, but it is sufficient to state generally that the same was published concerning the party named and the fact that it was published must be established on the trial.

What constitutes publicity.

(2165) § **10.** To sustain the charge of publishing liable it is not needful that the words complained of should have been read by any person; it is enough and sufficient evidence that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read by any person other than himself.

Newspapers.

(2166) § **11.** No editor or proprietor of any newspaper shall be liable to prosecution for a fair and true report of any judicial, legislative or other public officicial proceedings, except upon proof of malice in making such report, and in making such report or public official proceedings, malice shall not be implied from publication; but libellous remarks connected with matter privileged under the last section, shall not be privileged by reason of their being connected therewith.

Threats.

(2167) § **12.** Every person who threatens to publish a libel concerning any other person, or concerning any relative, wife or child, or dead relative of such person, or member of his family, shall be liable civilly and criminally to have the same intent as though the publication had been made. But if the thought be not in writing, the threat and character of the libellous matter must be proven by at least two witnesses, or by one witness and corroborating circumstances.

Action, how conducted.

(2168) § **13.** Civil and criminal actions for libel or slander shall be conducted as other actions and under the direction and charge of the court.

(2169) § **14.** All acts and parts of acts and laws inconsistent with this act are hereby repealed.

ARTICLE 26.—RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN AND SEDUCTION. Chap. 25.

SECTION.
1. Rape defined.
2. Physical ability must be shown.
3. What sufficient to constitute the crime.
4. Rape in first degree.
5. Rape in second degree.
6. Punishment in first degree.
7. Punishment in second degree.
8. Compelling woman to marry.
9. Intent to compel woman to marry or be defiled.
10. Seduction for prostitution.
11. Abduction.
12. Seduction under promise of marriage.
13. Subsequent marriage a defense.

Rape defined.

(2170) § **1.** Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

First. Where the female is under the age of fourteen years.

Second. Where she is incapable through lunacy or any other upsoundness of mind, whether temporary or permanent, of giving legal consent.

Third. Where she resists, but her resistance is overcome by force or violence.

Fourth. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution.

Fifth. Where she is prevented from resisting by any intoxicating narcotic or anesthetic agent, administered by or with the privity of the accused.

Sixth. Where she is at the time unconscious of the nature of the act and this is known to the accused.

Seventh. Where she submits under a belief that the person committing the act is her husband, and this belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

Physical ability must be shown, when.

(2171) § **2.** No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact and beyond a reasonable doubt.

What sufficient to constitute crime.

(2172) § **3.** The essential guilt of rape consists in the outrage to the person and feeling of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

Rape in first degree.

(2173) § **4.** Rape committed upon a female under the age of ten years, or incapable, through lunacy or any other unsoundness of mind, of giving legal consent, or accomplished by means of force overcoming her resistance, is rape in the first degree.

Rape in second degree.

(2174) § **5.** In all other cases, rape is of the second degree.

Punishment for rape in first degree.

(2175) § **6.** Rape in the first degree is punishable by imprisonment in the Territorial prison not less than ten years.

Punishment for rape in second degree.

(2176) § **7.** Rape in the second degree is punishable by imprisonment in the Territorial prison not less than five years.

Compelling woman to marry.

(2177) § **8.** Every person who takes any woman against her will, and by force, menace or duress, compels her to marry him or to marry any other person, is punishable by imprisonment in the Territorial prison not less than ten years.

Chap. 25.

Intent to compel woman to marry or be defiled.

(2178) § **9.** Every person who takes any woman unlawfully against her will, with the intent to compel her by force, menace or duress to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the Territorial prison not exceeding ten years.

Seduction for prostitution.

(2179) § **10.** Every person who inveigles or entices an unmarried female of previous chaste character under the age of twenty-five years, into any house of ill fame or of assignation, or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, is punishable by imprisonment in the Territorial prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Abduction.

(2180) § **11.** Every person who takes away any female under the age of fifteen years, from her father, mother, guardian or other person having the legal charge of her person, without their consent, either for the purpose of marriage, concubinage or prostitution, is punishable by imprisonment in the Territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Seduction under promise of marriage.

(2181) § **12.** Every person who, under promise of marriage, seduces and has illicit connection with any unmarried female of previous chaste character, is punishable by imprisonment in the Territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Subsequent marriage is a defense.

(2182) § **13.** The subsequent marriage of the parties is a defense to a prosecution for a violation of the last section.

ARTICLE 27.—ADULTERY.

SECTION.
1. Adultery defined.
2. Punishment for adultery.

Adultery defined.

(2183) § **1.** Adultery is the unlawful, voluntary sexual intercourse of a married person with one of the opposite sex and when the crime is committed between parties only one of whom is married, both are guilty of adultery. Prosecutions for adultery can be commenced and carried on against either of the parties to the crime only by his or her own husband or wife as the case may be, or by the husband or wife of the other party to the the crime.

Punishment for adultery.

(2184) § **2.** Every person guilty of the crime of adultery, shall be punished by imprisonment in the Territorial prison not exceeding five year or by fine not exceeding five hundred dollars, or both such fine and imprisonment.

ARTICLE 28.—ABANDONMENT AND NEGLECT OF CHILDREN.

SECTION.
1. Deserting a child.
2. Omitting to provide for child.

Deserting a child.

(2185) § **1.** Every parent of any child under the age of six

years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever with intent wholly to abandon it, is punishable by imprisonment in the Territorial prison not exceeding seven years, or in a county jail not exceeding one year.

Omitting to provide for child.

(2186) § **2.** Every parent of any child who wilfully omits, without lawful excuse to perform any duty imposed upon him by law to furnish necessary food, clothing, shelter or medical attendance for such child is guilty of a misdemeanor.

ARTICLE 29.—ABORTION AND CONCEALING DEATH OF CHILDREN.

SECTION.
1. Procuring an abortion.
2. Submitting to, or soliciting attempt to commit an abortion.
3. Concealing still birth or death of child.

Procuring an abortion.

(2187) § **1.** Every person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the Territorial prison not exceeding three years, or in a county jail not exceeding one year.

Submitting to or soliciting attempt to commit abortion.

(2188) § **2.** Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Concealing still birth or death of child.

(2189) § **3.** Every woman who endeavors either by herself or by the aid of others to conceal the still birth of an issue of her body, which if born alive would be a bastard, or the death of any such issue under the age of two years, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

ARTICLE 30.—CHILD STEALING.

SECTION.
1. Punishment for child stealing.

Punishment for child stealing,

(2190) § **1.** Every person who maliciously, forcibly or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child is punishable by imprisonment in the Territory prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SECTION.
1. Bigamy defined.
2. Exceptions to the definition of bigamy.
3. Punishment for bigamy.
4. What marriages are unlawful.
5. Incest defined.
6. Crime against nature.
7. Penetration sufficient.

Bigamy defined.

(2191) § **1**. Every person who having been married to another who remains living, marries any other person except in the cases specified in the next section is guilty of bigamy.

Exceptions to the rule of bigamy.

(2192) § **2**. The last preceding section does not extend:

First. To any person by a former marriage whose husband or wife by such marriage has been absent for five successive years without being known to such person within that time to be living; nor,

Second. To any person by reason of any former marriage whose husband or wife by such marriage, has absented himself or herself from his wife or her husband and has been continually remaining without the United States for a space of five years together; nor,

Third. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court; nor,

Fourth. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

Punishment of bigamy.

(2193) § **3**. Every person guilty of bigamy is punishable by imprisonment in the Territorial prison not exceeding five years.

What marriages are unlawful.

(2194) § **4**. Every person who knowingly marries the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, is punishable by imprisonment in the Territorial prison not exceeding five years, or in a connty jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Incest defined.

(2195) § **5**. Persons who, being within the degrees of consanguinity within which marriages are by the laws of the Territory, declared incestuous and void, intermarry with each other, or commit adultery or fornication with each other, are punishable by imprisonment in the Territorial prison not exceeding ten years,

Crime against nature.

(2196) § **6**. Every person who is guilty of the detestible and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the Territorial prison not exceeding ten years.

What constitutes crime against nature.

(2197) § **7**. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

ARTICLE 32.—VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD. Chap. 25.

SECTION.
1. Disposal of one's own body.
2. Duty of burial.
3. Burial in other states.
4. Dissection allowed, when.
5. Unlawful dissection is a misdemeanor.
6. Remains after dissection.
7. Dead limb or member of body.
8. Duty of burial devolves upon whom.
9. Neglect of burial.
10. Custody of body.
11. Unlawful removal of the dead.
12. Purchasing dead body.
13. Unlawful interference with places of burial.
14. Removal to another burial place.
15. Arresting or attaching dead body.
16. Disturbing funerals.
17. Injury to cemetery or tomb.
18. Violation of provisions of this article.

Disposal of one's own body

(2198) § **1.** Every person has the right to direct the manner in which his body shall be disposed of after his death, and to direct the manner in which any part of his body which becomes separated therefrom during his life time shall be disposed of. The provisions of this article do not apply where such person has given directions for the disposal of his body or any part thereof inconsistent with these provisions.

Duty of burial.

(2199) § **2.** Except in the cases in which a right to dissect a dead body is expressly conferred by law, every dead body of a human being lying within this Territory must be decently buried within a reasonable time after the death.

Burial in other states.

(2200) § **3.** The last section does not affect the right to carry the dead body of a human being through this Territory, or to remove from this Territory the body of a person dying within it, for the purpose of burying the same in another state or territory.

Dissection allowed, when.

(2201) § **4.** The right to dissect the dead body of a human being exists in the following cases:

First. In the cases authorized by positive enactment of the Legislative assembly of this Territory.

Second. Whenever the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorizes such dissection for the purposes of the inquest.

Third. Whenever any husband or next kin of a deceased person, being charged by law with the duty of burial, authorizes such dissection for the purpose of ascertaining the cause of death.

Unlawful dissection is a misdemeanor.

(2202) § **5.** Every person who makes or procures to be made any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

Remains after dissection.

(2203) § **6.** In all cases in which a dissection has been made, the provisions of this article requiring the burial of a dead body, and punishing interference with or injuries to a dead body, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.

Dead limb or member of body

(2204) § **7.** All provisions of this article requiring the burial of a dead body, or punishing interference with or injuries to a dead body, applying equally to any dead limb or member of a human body, separated therefrom during life time.

Duty of burial devolves upon whom.

(2205) § **8.** The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

First. If the deceased were a married woman, the duty of burial devolves upon her husband.

Second. If the deceased were not a married woman, but left any kindred, the duty of burial devolves upon any person or persons in the same degree nearest of kin to the deceased, being of adult age, and within this Territory, and possessed of sufficient means to defray the necessary expenses.

Third. If the deceased left no husband, nor kindred, answering to the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

Fourth. In case the person upon whom the duty of burial if cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant, or, if there be no tenant, upon the owner of the premises, or master, or, is there is no master, upon the owner of the vessel in which the death occurs or the body is found.

Neglect of burial.

(2206) § **9.** Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

Who is entitled to custody of body.

(2207) § **10.** The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the cases in which an inquest is required by law to be held upon a dead body, by a coroner, such coroner is entitled to its custody until such inquest has been completed.

Unlawful removal of the dead.

(2208) § **11.** Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it without authority of law, or from malice or wantonness, is punishable by imprisonment in the Territorial prison not exceeding five years, or in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Purchasing dead body.

(2209) § **12.** Every person who purchases, or who receives, except for the purpose of burial, any dead body of a human being, knowing that the same has been removed contrary to the last section, is punishable by imprisonment in the Territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Unlawful interference with places of burial.

(2210) § **13.** Every person who opens any grave or any place

of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent either:

First. To remove any dead body of a human being for the purpose of selling the same, or for the purpose of dissection; or,

Second. To steal the coffin, or any part thereof or any thing attached thereto, or connected therewith, or the vestments or other articles buried with the same, is punishable by imprisonment in the Territorial prison not exceeding two, or in a county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

Removal to another burial place.

(2211) § **14.** Whenever a cemetery or other place of burial is lawfully authorized to be removed from one place to another, the right and duty to disinter, remove and rebury the remains of bodies there lying buried devolves upon the same persons required to bury the deceased in the order in which they there are named, and if they all fail to act, then upon the lawful custodians of the place of burial so removed. Every omission of such duty is punishable in the same manner as other omissions to perform the duty of making burial.

Arresting or attaching dead body.

(2212) § **15.** Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

Disturbing funerals.

(2213) § **16.** Every person who wilfully disturbs, interrupts or disquiets any assemblage of people met for the purpose of any funeral, or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial, is guilty of a misdemeanor.

Injury to cemetery or tomb.

(2214) § **17.** Every person who shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any cemetery or private burying ground, or any fence, railing, or other work for the protection or ornament of any such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento, or memorial, or other structure aforesaid, or of any lot within a cemetery, or shall wilfully destroy, cut, break, or injure any tree, shrub or plant, within the limits thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by fine of not less than five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment.

Violation of provisions of this article.

(2215) § **18.** Every person who violates any provision of any enactment of the Legislative Assembly of this Territory, now in force, or that hereafter may be enacted, not provided for in this article relative to dissection, is guilty of a misdemeanor.

Chap. 25. ARTICLE 33.—INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

SECTION.
1. Indecent exposure of body or pictures.
2. Seizure of indecent articles.
3. Their character summarily determined.
4. Destruction of articles.
5. Keeping bawdy house.
6. Keeping disorderly house,
7. Letting building for unlawful purposes.

Indecent exposure of body or pictures.

(2216) § **1.** Every person who wilfully and lewdly, either:

First. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

Second. Procures, counsels or assists any person so to expose himself, or to take any part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

Third. Writes or composes, stereotypes, prints, publishes, sells, distributes or keeps for sale, or exhibits any obscene or indecent writng, paper or book, or designs or copies, draws or engraves, paints or otherwise prepares any obscene or indecent picture or print of any description, or molds, cuts, casts, or otherwise makes any obscene or indecent figure, or form,

Is guilty of a misdemeanor.

Seizure of indecent articles.

(2217) § **2.** Every person who is authorized or enjoined to arrest any person for a violation of sub-division 3 of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Their character summarily determined.

(2218) § **3.** The magistrate to whom any obscene or indecent writing, paper, book, picture, print or figure, is delivered pursuant to the foregoing section, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print or figure, and if he finds it to be obscene or indecent, he shall cause the same to be destroyed, or to be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justiee in his judgment require. But not more than two copies of any one writing, paper, book, picture, print or figure, shall be delivered to the district attorney.

Destruction of articles.

(2219) § **4.** Upon the conviction of the accused, such district attorney shall cause any writing, paper, book, picture, print or figure, in respect whereof the accused stands convicted and which remains in the possession or under the control of such district attorney, to be destroyed.

Keeping of bawdy house.

(2220) § **5.** Every person who keeps any bawdy house, house of ill fame, of assignation, or of prostitution, or any other house

or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene or indecent purpose, is guilty or a misdemeanor.

Keeping disorderly house.

(2221) § **6.** Every person who keeps any disorderly house, or any house of public resort by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, is guilty of a misdemeanor.

Letting building for unlawful purposes,

(2222) § **7.** Every person who lets any building or portion of any building knowing that it is intended to be used for any purpose declared punishable by this chapter, or who otherwise permits any building or portion of a building to be so used, is guilty of a misdemeanor.

[Following the enrolled bill, this article would be stricken out, as 6574 is used in place of 6567 and 6588 in place of 6573, in referring to the Dakota sections as adopted. The engrossed bill shows the enrolled copy to be in error, consequently the article is inserted as law.]

ARTICLE 34.—LOTTERIES.

SECTION.
1. Lottery defined.
2. Lottery is a public nuisance.
3. Drawing lottery.
4. Selling lottery tickets.
5. Buying lottery tickets.
6. Advertising lotteries.
7. Offering property dependent upon a lottery.
8. Lottery offices.
9. Advertising lottery offices.
10. Insuring lottery tickets.
11. Advertising insurance, lottery tickets.
12. Property offered by lottery is forfeited.
13. Letting buildings for lottery.
14. Lotteries out of the territory.
15. Advertisements.

Lottery defined.

(2223) **1.** A lottery is any scheme for the disposal or distribution property by chance among persons who have paid or promised or agreed to pay any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share of, of interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by a lot or chance, whether called a lottery, a raffle, or a gift enterprise, or by whatever name the same may be known.

Lottery is a public nuisance.

(2224) § **2.** Every lottery is unlawful, and a common public nuisance.

Drawing lottery.

(2225) § **3,** Every person who contrives, prepares, sets up, proposes or draws any lottery, is punishable by a fine equal to double the amount of the whole sum or value for which such lottery was made, and if such amount cannot be ascertained, then by imprisonment in the Territorial prison not exceeding two years or by imprisonment in a county jail not exceeding one year, or by a fine of two thousand five hundred dollars, or by both such fine and imprisonment.

Selling lottery tickets.

(2226) § **4.** Every person who sells, gives, of in any manner whatever furnishes or transfers to or for any other person, any ticket, chance, share or interest, or any paper, certificate or instrument, purporting or represented or understood to be, or represent any ticket, chance, share or interest in or depending upon the event of any lottery, is guilty of a misdemeanor.

Buying lottery tickets.

(2227) § **5.** Every person who buys, or in any manner whatever accepts or receives for himself or another any ticket, chance, share or interest, or any paper, certificate or instrument purport-

ing or represented or understood to be, or to represent any ticket, chance, share, or interest in or depending upon the event of any lottery, forfeits ten dollars, to be recovered by the county superintendent of public instruction of the county in which the offense was committed, for the use of common schools in said county.

Advertising lotteries.

(2228) § **6.** Every person who, by writing or printing, by circulars or letters, or in any other way advertises or publishes any account of any lottery, stating when or where the same is to be or has been drawn, or what are the prizes or any of them therein, or the price of a ticket or of any share or interest or where it may be obtained, or in any way aiding or assisting the same, or adapted to induce persons to adventure therein, is guilty of a misdemeanor.

Offering property dependent on lottery.

(2229) § **7.** Every person who offers for sale, distribution or disposition in any way, any real or personal property, or things in action, or any interest therein, to be determined by lot or chance, that shall be dependent upon the drawing of any lottery within or out of this Territory, and every person who sells, furnishes or procures, or causes to be sold, furnished or procured in any manner whatsoever, any chance or share, or any interest whatsoever in any property offered for sale, distribution or disposition in violation of this section, or any ticket or other evidence of any chance, share or interest in such property, is guilty of a misdemeanor.

Lottery offices.

(2230) § **8.** Every person who opens, sets up or keeps, by himself, or by any other person or persons, any office or other place for registering the numbers of any ticket in any lottery, or for making, receiving or registering any bets or wagers upon the drawing, determination or result of any lottery, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars.

Advertising lottery offices.

(2231) § **9.** Every person who, by writing or printing, by circulars or letters, or in any other way, advertises or publishes any account of the opening, setting up or keeping of any office or other place for either of the purposes prohibited by the last section, is guilty of a misdemeanor.

Insuring lottery tickets.

(2232) § **10.** Every person who insures or receives any consideration for insuring for or against the drawing of any ticket, share, or interest in any lottery, or for or against the drawing of any number, or ticket, or number of any ticket in any lottery; and every person who receives any valuable consideration upon any agreement to pay any sum, or to deliver any property or thing in action in the event that any ticket, share, or interest in any lottery, or any number, or ticket, or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn on any particular day, or in any particular order; and every person who promises, agrees, or offers to pay any sum of money or to deliver any property or thing in action, or to do, or forbear to do anything for the benefit of any other person, with or without consideration, upon any event whatever connected with any lottery, is guilty of a misdemeanor.

(2233) § **11**. Every person who, by writing or printing, by circulars or letters, or in any other way, advertises or publishes any offer, notice or proposal for any violation of the last section, is guilty of a misdemeanor. Advertising insurance of lottery tickets.

(2234) § **12.** All property offered for sale, distribution, or disposition, in violation of the provisions of this article, is forfeited to the people of this Territory, as well before as after the determination of the chance on which the same was dependent. And it is the duty of the respective district attorneys, to demand, sue for, and recover, in behalf of this Territory, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury for the benefit of common schools. Property offered by lottery is forfeited.

(2235) § **13**. Every person who lets or permits to be used any building or portion of any building, knowing that it is intended to be used for any of the purposes declared punishable by this article, is guilty of a misdemeanor. Letting building for lottery.

(2236) § **14.** The provisions of this article apply in respect to lotteries drawn or to be drawn out of this Territory, whether authorized or not by the laws of the state where they are drawn or to be drawn, in same manner as to lotteries drawn or to be drawn within this Territory. Lotteries out of the territory.

(2237) § **15.** The provisions of sections 2228 and 2231 are applicable wherever the advertisement was published, or the letter or circular sent or delivered through or in this Territory, notwithstanding the person causing or procuring the same to the published, sent or delivered, was out of this Territory at the time of so doing. Advertisements.

ARTICLE 35.—GAMING.

SECTION.
1. Keeping gambling apparatus.
2. Punishment.
3. Apparatus as a nuisance.
4. Exacting payment of money won at game of chance.
5. Privilege of witness.
6. Keeping gambling establishment.
7. Keeping gaming tables.
8. Seizure of implements authorized.
9. Implements destroyed.
10. Same; upon conviction.
11. Persuading person to visit gambling houses.
12. Duty of police officers and prosecuting attorneys.
13. Duty of masters of vessels.
14. Racing animals for wagers.

(2238) § **1**. It is unlawful to maintain or keep any table, cards, dice, or any other article or apparatus whatever, useful or intended to be used in playing any game of cards or faro or other game of chance upon which money is usually wagered. Keeping gambling apparatus.

(2239) § **2**. Every person who knowingly violates the last section is guilty of a misdemeanor. Punishment.

(2240) § **3**. Every article or apparatus maintained or kept in violation of the first section of this chapter is a common and public nuisance. Apparatus as a nuisance.

(2241) § **4**. Every person who exacts or receives from another directly or indirectly, any valuable consideration, by reason of the same having been won by playing at cards, faro, or any other Exacting payment of money won at game of chance.

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game at chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the consideration so exacted or received, to be recovered in a civil action, by the county superintendent of public instruction of the county in which the offense was committed for the benefit of common schools in said county.

Privilege of witness.

(2242) § **5.** No person shall be excused from giving any testimony or evidence upon any investigation or preceeding for violation of this article upon the ground that such testimony would tend to convict him of a crime, but such testimony or evidence shall not be received against him upon any criminal investigation or proceeding, except in a prosecution against him for perjury committed in giving such testimony.

Keeping gambling establishments.

(2243) § **6.** Every person who keeps any building, or part of any building, or any vessel or float, to be used or occupied for gambling, and every owner, agent or superintendent of any such place who knowingly lets the same or allows it to be used or occupied for gambling, is guilty of a misdemeanor.

Keeping gaming tables.

(2244) § **7.** Every person who, for gambling purposes, keeps or exhibits any gambling table, establishment, device, or apparatus, or is guilty of dealing faro, or banking for others to deal faro, or acting as lookout or gamekeeper for the game of faro, or any other banking game where money or property is dependant upon the result, or who sells or vends what are commonly called lottery policies, or any writing, card, paper, or document in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery, or indorses a book or any other document for the purpose of enabling others to sell or vend lottery policies, is deemed a common gambler, and is punishable as for a misdemeanor.

Seizure of implements.

(2245) § **8.** Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this article is equally authorized and enjoined to seize any table, cards, dice, or other article or apparatus, suitable to be used for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Implements destroyed.

(2246) § **9.** The magistrate to whom anything suitable to be used for gambling purposes is delivered, pursuant to the foregoing section, shall, upon the examination of the accused, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him, and whether it was actually employed by the accused in violation of the provisions of this article; and if he finds that it is of a character suitable to be used for gambling purposes, and that it has been used by the accused in violation of this article, he shall cause it to be destroyed or be delivered to the district attorney of the county in which the accused is liable to indictment or trial as the interests of justice, in his judgment, require.

Same.

(2247) § **10.** Upon the conviction of the accused such district attorney shall cause any such thing suitable to be used for gambling purposes, in respect whereof the accused stands convicted

and which remains in the possession or under the control of such district attorney, to be destroyed.

Persuading persons to visit gambling places.

(2248) § **11.** Every person who persuades another to visit any building or part of a building, or any vessel or float used or occupied for the purpose of gambling, in consequence whereof such other person gambles therein, is guilty of a misdemeanor, and, in addition to the punishment described therefor, is liable to such other person in an amount equal to any money or property lost by him at play at such place, to be recovered in a civil action.

Duty of public officers and prosecuting attorneys.

(2249) § **12.** It is the duty of all sheriffs, police officers, constables, and prosecuting or district attorneys, to inform against and prosecute all persons whom they have credible reason to believe are offenders against the provisions of this article, and any omission so to do is punishable by a fine not exceeding five hundred dollars.

Duty of masters of vessels.

(2250) § **13.** If any commander, owner or lessee of any vessel or float, knowingly permits any gambling for money or property on board such vessel or float, and does not upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceeding five hundred dollars, and in addition thereto is liable to any party losing any money or property by means of any gambling permitted in violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

Racing animals for wager.

(2251) § **14.** All racing or trial of speed between horses or animals for any bet, stake or reward, except such as is allowed by special laws, is a common nuisance, and every person acting or aiding therein, or making or being interested in any such bet, stake or reward, is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result therof.

ARTICLE 36.—PAWNBROKERS.

SECTION.
1. Pawnbroking without license.
2. Refusing to exhibit stolen goods.
SECTION
3. Selling pledge before default.

Pawnbroking without license.

(2252) § **1.** Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above that allowed by law, except by authority of a license from a municipal corporation empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

Refusing to exhibit stolen goods.

(2253) § **2.** Every pawnbroker or person carrying on the business of a pawnbroker, and every junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof is guilty of a misdemeanor.

Selling pledge before default.

(2254) § **3.** Every pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, and every pawnbroker who wilfully refuses to disclose

the name of the purchaser and the price received by him for any article received by him in pledge, and subsequently sold, is guilty of a misdemeanor.

ARTICLE 37.—OF OTHER INJURIES TO PERSONS.

SECTION.		SECTION.	
1.	Intoxicated physicians.	11.	Refilling and selling bottles.
2.	Wilfully poisoning food.	12.	Keeping bottles with intent to refill.
3.	Fictitious copartnership.	13.	Same, complaint, search and penalty.
4.	Counterfeiting trade marks.	14.	Giving false pedigree with animals.
5.	Keeping dies of trade marks.	15.	Defacing marks.
6.	Selling goods bearing counterfeit trade mark.	16.	Fraud in partnership.
7.	Imitations; partial.	17.	Solemnizing unlawful marriages.
8.	Trade mark defined.	18.	Unfawful confinement of lunatics.
9.	Goods defined.	19.	Reconfining persons.
10.	Affixed trade mark defined.	20.	Concealing persons.
		21.	Assisting in concealment.

Intoxicated physician.

(2255) § **1.** Every physician who being in the state of intoxication administers any poison, drug or medicine, or does any other act as such physician to another person, is guilty of a misdemeanor, but if death follows therefrom, he shall be deemed guilty of manslaughter in the first degree.

Wilfully poisoning food.

(2256) § **2.** Every person who wilfully mingles any poison with any food, drink or medicine, with intent that the same shall be taken by any human being to his injury, and every person who wilfully poisons any spring, well or reservoir of water, is punishable by imprisonment in the Territorial prison not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Fictitious co-partnership.

(2257) § **3.** Every person transacting business in the name of a person as a partner who is not interested in his firm, or transacting business under a firm name in which the designation "and company" or "& Co." is used without representing an actual partner except in the cases in which the continued use of a co-partnership name is authorized by law, is guilty of a misdemeanor.

Counterfeiting trade mark.

(2258) § **4.** Every person who wilfully forges, counterfeits or procures to be forged or counterfeited any trade mark usually affixed by any person to any goods of such person, with intent to pass off any goods to which such forged or counterfeit trade mark is affixed, or intended to be affixed, as the goods of such person is guilty of a misdemeanor,

Keeping dies of trade mark.

(2259) § **5.** Every person who, with intent to defraud, has in his posession any die, plate or brand, or any imitation of the trade mark of any person, for the purpose of making any counterfeit or imitation of any description whatever of such trade mark, or of selling the same when made, or affixing the same to any goods, and selling and offering the same for sale or disposal; as the original goods of any other person, and every person who so uses or sells the same, or who fraudulently uses the genuine trade mark of another with intent to sell or offer for sale or disposal, any goods not the goods of the person to whom such trade mark

properly belongs, as genuine and original, is guilty of a misdemeanor.

Selling goods bearing counterfeit trade mark..

(2260) § **6**. Every person who sells or keeps for sale any goods upon which any counterfeited trade mark has been affixed, intended to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

Imitations: partial.

(2261) § **7**. Every person who, with intent to defraud, affixes or causes to be affixed to any goods or to any bottle, case, box or other package containing any goods, any description of label, stamp, brand, imprint, printed wrapper, label or mark, which designates such goods by any word or token which is wholly or ie part the same to the eye, or to the ear, as the word or any of the words or tokens used by any other person as his trade mark, and every person who knowingly sells, or keeps or offers for sale, any such bottle, case, box or other package, with any such label, stamp, brand, imprint, printed wrapper, ticket or mark affixed to or upon it, in case the person affixing or causing to be affixed such mark, or so selling, or exposing, or offering for sale such bottle, case, box or other package, was not the first to employ or use such words as his trade mark, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action.

Trade mark defined.

(2262) § **8**. The word "trade mark," as used in the sections preceding, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description.

Goods defined.

(2263) § **9**. The word "goods," as used in the sections preceding, includes every kind of goods, wares, merchandise, compound or preparation, which may be lawfully kept or offered for sale.

Affixed trade mark defined.

(2264) § **10**. The offense of affixing a false trade mark to goods is equally complete whether such mark is affixed to the goods themselves or to any box,bale, barrel,bottle case, cask, wrapper or other package or vessel, or any cover or stopper thereof, in which such goods are put up.

Refilling and selling bottl es.

(2265) § **11**. Whenever any person engaged in manufacturing, bottling, selling in bottles, soda, mineral waters, porter, ale, cider or small beer, has filed and published, in the manner authorized by law, a description of a name, mark or label usually stamped by him in the bottles containing such beverage, every other person who, without the written consent of such manufacturer or dealer, refills with any beverage, whether genuine or otherwise, with the intent to sell the same, any bottles stamped with such name, mark or label, and every person who sells, disposes of, purchases or traffics in such bottle, is liable to a penalty of fifty cents for each and every bottle so filled, sold, bought, disposed of, or trafficked in, for the first offense, and five dollars for each and every bottle

so filled, bought, disposed of, or trafficked in, for every subsequent offense.

Keeping bottles with intent to refill.

(2266) § **12.** Every person who keeps any bottles such as are designated in the last section, without the written consent of the manufacturer so to do, unless it appears that they were not kept with intent to refill or use or sell them in violation of the last section, is liable to the penalty therein prescribed.

Same, complaint, search and penalty.

(2267) § **13.** Whenever any manufacturer or dealer designated by the second preceding section, or his agent shall make oath or affirmation before any magistrate that he has reason to believe and does believe that any of his bottles, stamped and registered as mentioned in said section, are being unlawfully used by any person or persons selling or manufacturing mineral water or other beverages, or that any junk dealer or vendor of bottles has any of such bottles secreted in any place, such magistrate shall thereupon issue a search warrant to discover and obtain the same under the provisons of the law upon search warrants, which are hereby declared to fully relate to the purposes of this article; and the magistrate may summarily bring or cause to be brought before him the person in whose possession the bottles are found, to examine into the circumstances of his possession and if such magistrate on summary examination finds that such person has been guilty of a violation of the second preceding section, such magistrate shall proceed to impose the fine therein prescribed, and, if the same be not paid, to commit such person to prison for a term not exceeding fifteen days.

Unlawful to give false pedigree of animals

(2268) § **14.** Every person who by any false pretense shall obtain from any club, association, society or company, for improving the breed of cattle, horses, sheep, swine, or other domestic animals, the registration of any animal in the herd register of any such club, association, society, or company, or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor.

Defacing marks.

(2269) § **15.** Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises to appearance thereof with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership, is guilty of a misdemeanor.

Fraud in partnership.

(2270) § **16.** Every member of a limited partnership who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor,

Solemnizing unlawful marriages.

(2271) § **17.** Every minister or magistrate who solemnizes any marriage, where either of the parties is known to him to be within the age of legal consent, or to be an idiot or an insane person, or any marriage to which within his knowledge any legal impediment exists, is guilty of a misdemeanor.

Unlawful confinement of lunatics.

(2272) § **18.** Every overseer of the poor, constable, keeper of a jail, or other person who confines any idiot, lunatic, or insane person, in any other manner or in any other place than is authorized by law, is guilty of a misdemeanor.

Reconfining persons.

(2273) § **19.** Every person who, either solely or as a member of a court, in the execution of a judgment, order or process, knowingly recommits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from imprisonment upon a writ of deliverance, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, he forfeits to the party aggrieved one thousand dollars, to be recovered in a civil action.

Concealing persons

(2274) § **20.** Every person having in his custody or power, or under his restraint, a party who, by the provisions of law relating to *habeas corpus*, would be entitled to a writ of *habeas corpus*, or for whose relief such writ has been issued, who, with intent to elude the service of such writ, to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who, without lawful excuse, refuses to produce him, is guilty of a misdemeanor.

Assisting in concealment.

(2275) § **21** Every person who knowingly assists in the violation of the last section is guilty of a misdemeanor.

ARTICLE 38.—OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

SECTION.		SECTION.	
1.	Public nuisance defined.	18.	Manufacturing slung shot.
2.	Unequal damage.	19.	Carrying or using slung shot.
3.	Maintaining nuisance is a misdemeanor.	20.	Concealed weapon.
4.	Keeping gunpowder.	21.	Wilful prairie fires.
5.	Throwing gas tar into public water.	22.	Negligent prairie fires.
6.	Violating quarantine regulations.	23	Refusing aid at fires.
7	Obstructing health officer.	24.	Ferries must be licensed.
8	Violating health laws.	25.	Ferry bond violated.
9.	Apothecary liable for negligence.	26.	Failure to ring bell of locomotive.
10	Record and witness of poison sale.	27.	Drunken engineer, conductor or driver.
11.	Same; violation of.	28.	Agent's neglect of duty.
12.	Record of poisons to be public.	29.	Exposing person with contagious disease.
13.	Laying out poisons.	30	Frauds to effect market price.
14.	Omitting to mark hay.	31.	False statements in newspapers.
15.	Increasing weight of barrels, boxes, etc.	32.	Eavesdropping.
16.	Adulterating food.	33.	Racing upon highways.
17.	Disposing of tainted food.		

Public nuisance defined.

(2276) § **1.** A public nuisance is a crime against the order and economy of the Territory, and consists in unlawfully doing any act or omitting to perform any duty required by the public good, which act or omission either:

First. Annoys or injures the comfort, repose, health or safety of any considerable number of persons; or,

Second. Offends public decency; or,

Third. Unlawfully interferes with, obstructs, or tends to obstruct, any lake, or any navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,

Fourth. In any way renders life or the use of property uncomfortable.

Unequal damages.

(2277) § **2.** An act which affects a considerable number of

person in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal.

Maintaining nuisance is a misdemeanor.

(2278) § **3**. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

Keeping gunpowder.

(2279) § **4**. Every person who makes or keeps gunpowder or saltpeter within any city or village, and every person who carries gunpowder through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or village, is guilty of a misdemeanor.

Throwing gas tar into public water.

(2280) § **5**. Every person who throws or deposits any gas tar, or refuse of any gas house or factory, into any public waters, river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a misdemeanor.

Violating quarantine regulations.

(2281) § **6**. Every person who having been lawfully ordered by any health officer to be detained in quarantine and not having been discharged leaves the quarantine grounds or wilfully violates any quarantine law or regulation, is guilty of a misdemeanor.

Obstructing health officer.

(2282) § **7**. Every person who wilfully opposes or obstructs any health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

Violating health laws.

(2283) § **8**. Every person who wilfully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws, or by this chapter, and every person who wilfully violates or refuses or omits to comply with any lawful order, direction, prohibition or regulation prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

Apothecary liable for negligence.

(2284) § **9**. Every apothecary or druggist, and every person employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who, in putting up any drugs or medicines, wilfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor.

Record and witness of poison; sale.

(2285) **10**. No druggest, apothecary or other person dealing or trafficking in drugs or medicines, and no person employed as clerk or salesman by any apothecaay or druggist, shall sell or give away any poison or poisonous substances, except to practicing physicians, in their ordinary practice of medicine, without recording in a book, to be kept for that purpose, the name of the person or persons receiving such poison, and his, her or their residence, together with the name and residence of some person as

witness to such sale, excepting upon the written order or prescription of some practicing physician whose name must be attached to such order or prescription. No person shall sell, give away or dispose of any poisonous substance without attaching to the phial, box or parcel containing such poisonous substance a label with the word "poison" printed or written upon it, in plain and legible characters.

Same, violation of.

(2286) § **11.** Any person violating any of the provisions of the first preceding section shall be deemed guilty of a misdemeanor.

Record of poisons to be public.

(2287) § **12.** Every person whose duty it is by the second preceding section to keep any book for recording the sale or gift of poisons, who wilfully refuses to permit any person to inspect said book upon reasonable demand made during business hours, is punishable by fine not exceeding fifty dollars.

Laying out poisons.

(2288) § **13.** Every person who shall, except in a safe place on his own premises, lay out strychnine or other poison within the limits of any town or within one mile of any dwelling house, or any barn, stable or out building used at the time for keeping or shelter of horses, cattle, sheep or swine, or within one-half mile of any travelled thoroughfare, or on lands not his own, on the ceded lands of this Territory, is guilty of a misdemeanor: *Provided*, Nothing in this section shall be construed to prohibit the putting out at any time of poisoned grain for the purpose of killing gophers.

Omitting to mark hay.

(2289) § **14.** Every person who, in putting up or pressing any bundle of hay for market, omits to put the number of pounds in each bundle or bale so put up, for which he sells or offers to sell it, is guilty of a misdemeanor.

Increasing weight of barrels, boxes, etc.

(2290) § **15.** Every person who by putting up in any bag, bale, box, barrel or other package, any hops, cotton, hay or other goods usually sold in bags, bales, barrels or packages, by weight, puts in or conceals therein anything whatever for the purpose of increasing the weight of such bag, bale, box, barrel or package, is punishable by a fine of twenty-five dollars for each offense.

Adulterating food.

(2291) § **16.** Every person who adulterates or dilutes any article of food, drink, drug, medicine, strong, spirituous or malt liquor or wine, or any article useful in compounding either of them, whether one useful for mankind or for animals, with a fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells or keeps or offers for sale the same as unadulterated or undiluted, knowing it to have been adulterated or diluted, is guilty of a misdemeanor.

Disposing of tainted food.

(2292) § **17.** Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug or medicine, knowing that the same has become tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank by any person or animal, is guilty of a misdemeanor.

Manufacturing slung shot.

(2293) § **18.** Every person who manufactures or causes to be manufactured, or sells or offers or keeps for sale, or gives or dis-

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poses of any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a misdemeanor.

Carrying or using slung shot.

(2294) § **19.** Every person who carries upon his person, whether concealed or not, or uses or attempts to use against another, any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a felony.

Concealed weapons.

(2295) § **20.** Every person who carries concealed about his person and description of firearms, being loaded or partly loaded, or any sharp or dangerous weapon, such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.

Wilful prairie fires.

(2296) § **21.** Every person who shall wilfully set on fire, or cause to be set on fire, any woods, marshes or prairies, with intention to injure the property of another, shall be deemed guilty of a misdemeanor, and shall be liable for all damages done by such fire.

Negligent prairie fires.

(2297) § **22.** Every person who negligently or carelessly sets on fire, or causes to be set on fire, any woods, marshes, or prairies, or who, having set the same on fire, or caused it to be done, negligently or carelessly, or without full precaution or efforts to prevent, permits it to spread beyond his control, shall, upon conviction, be fined not exceeding one hundred dollars and not less than ten dollars, and shall be liable to injured parties for all damages occasioned thereby. One-half of such fine shall, when collected, go to the informer.

Refusing to aid at fires.

(2298) § **23.** Every person who, at any burning of a building, is guilty of any disobedience to lawful orders of any public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or of any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Ferries must be licensed.

(2299) § **24.** Every person who maintains any ferry for profit or hire upon any waters within this Territory, without having first obtained a license as provided by law, is guilty of a misdemeanor. And any license or lease granted by the board of county commissioners of the proper county shall be exclusive to the lessee or licensee for a distance of two miles from the place where such ferry is located, up and down such stream either way; and any person who shall ferry, transport or carry or attempt to ferry, transport or carry any passengers, goods, chattels, or merchandise, or who shall have, keep, or maintain any scow, skiff, or boat for the purpose of ferrying, transporting, or carrying any passengers, goods, chattels or merchandise upon any water of this Territory, within a distance of two miles of any licensed ferry, shall be guilty of a misdemeanor, and may be punished by a fine not exceeding one hundred dollars, or thirty days imprisonment in the county jail, or by both fine and imprisonment; when such ferry is upon waters dividing two counties, the offenders may be prosecuted in either county.

Ferry bond violated.

(2300) § **25.** Every person who having entered into a bond or obligation, as provided by his ferry charter or any general law on

the subject of ferries, to keep and attend a ferry, violates the condition of such bond or obligation, is guilty of a misdemeanor.

Failure to ring bell of locomotive.

(2301) § **26.** Every person in charge, as engineer of a locomotive engine, who omits to cause a bell to ring or a steam whistle to sound at the distance of at least eighty rods from the place where the track crosses, on the same level, any travelled public way, is punishable by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding sixty days.

Drunken engineer or conductor or driver.

(2302) § **27.** Every person who, while in charge, as engineer, of a locomotive engine, or while acting as conductor or driver upon a railroad train or car, whether propelled by steam or drawn by horses, is intoxicated, is guilty of a misdemeanor.

Agent's neglect of duty.

(2303) § **28.** Every engineer, conductor, brakeman, switch-tender, or other officer, agent or servant of any railroad company, who is guilty of any wilful violation or omission of his duty as such officer, agent or servant, by which human life or safety is endangered, the punishment for which is not otherwise prescribed, is guilty of a misdemeanor.

Exposing person with contagious disease.

(2304) § **29.** Every person who wilfully exposes himself or another person, being affected with any contageous disease in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

Frauds affec market price.

(2305) § **30.** Every person who wilfully makes or publishes any false statement, spreads any false rumor, or employs any other false and fraudulent means or device, with intent to effect the market price of any kind of property, is guilty of a misdemeanor.

False statements in newspapers.

(2306) § **31.** Every editor or proprietor of any newspaper who wilfully publishes in such newspaper as true, any statement which he has not good reason to believe to be true, with intent to increase thereby the sales of copies of such paper, is guilty of a misdemeanor.

Eavesdropping.

(2307) § **32.** Every person guilty of secretly loitering about any building, with intent to overhear discourse therein, and to repeat or publish the same to vex, annoy, or injure others, is guilty of a misdemeanor.

Racing upon highways.

(2308) § **33.** Every person driving any conveyance drawn by horses upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance, or to prevent such other from passing his own, is guilty of a misdemeanor.

ARTICLE 39.—CRIMES AGAINST THE PUBLIC PEACE.

SECTION
1. Disturbing lawful meetings.
2. Riot defined.
3 Punishment for riot.
4 Rout defined.
5 Unlawful assembly defined.
6. Punishment for rout or unlawful assembly
7. Warning to disperse.
8. Presence after unlawful purpose is known.
9. Refusing to arrest rioters.
10 Combinations to resist process.
11. Prize fight.

SECTION.
12. Challenge to a prize fight.
13. What constitutes a challenge.
14. Leaving the territory to engage in prize fight.
15. Place of trial.
16. Duty of peace officers.
17. Neglect of duty by officer.
18. Forcible entry and detainer.
19. Returning to possession after lawful removal.
20. Unlawful intrusion upon land.
21. Discharging fire arms in public place.
22. Privilege of witness.

Disturbing lawful meeting.

(2309) § **1.** Every person who without authority of law wilfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than a religious meeting, public meeting of electors, or funeral, is guilty of a misdemeanor.

Riot defined.

(2310) § **2.** Any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot,

Punishment for riot.

(2311) § **3.** Every person guilty of participating in any riot is punishable as follows:

First, If any murder, maiming, robbery, rape or arson was committed in the course of such riot, such person is punishable in the same manner as a principal in such crime.

Second. If the purpose of the riotous assembly was to resist the execution of any statute of this Territory or of the United States, or to obstruct any public officer of this Territory or of the United States, in the performance of any legal duty, or in serving or executing any legal process, such person is punishable by imprisonment in the Territorial prison not exceeding ten years and not less than two.

Third. If such person carried, at the time of such riot, any species of firearms, or other deadly or dangerous weapon, or was disguised, he is punishable by imprisonment in a Territorial prison not exceeding ten years and not less than two.

Fourth. If such person directed, advised, encouraged or solicited other persons, who participated in the riot, to acts of force or violence, he is punishable by imprisonment in the Territorial prison for not less than three years.

Fifth. In all other cases such person is punishable as for a misdemeanor.

Rout defined.

(2312) § **4.** Whenever three or more persons, acting together, make any attempt to do any act toward the commission of an act which would be riot if actually committed, such assembly is a rout.

Unlawful assembly defined.

(2313) § **5.** Whenever three or more persons assemble with intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do not act toward the commission thereof, or whenever such persons assemble without authority of law, and in such a manner as is adapted to disturb the public peace, or excite public alarm, such assembly is an unlawful assembly.

Punishment for rout or unlawful assembly.

(2314) § **6.** Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Warning to disperse.

(2315) § **7.** Every person remaining present at the place of any riot, rout or unlawful assembly, after the same has been lawfully warned to disperse, except public officers, and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Presence after unlawful purpose becomes known.

(2316) § **8.** Where three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to riot if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is

made known, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Refusing to arrest rioter.

(2317) § **9**. Every person present at any riot, and lawfully commanded to aid the magistrate or officers in arresting any rioter, who neglects or refuses to obey such command, is deemed one or the rioters, and punishable accordingly.

Combination to resist process.

(2318) § **10**. Every person who resists, or enters into a combination with any other person to resist the execution of any legal process, under circumstances not amounting to a riot, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

Prize fight a misdemeanor.

(2319) § **11**. Every person who engages in, instigates, encourages or promotes, any ring or prize fight, or any other premeditated fight or contention, whether as principal, aid, second, umpire, surgeon or otherwise, although no death or personal injury ensues, is guilty of a misdemeanor.

Challenge to prize fight.

(2320) § **12**. Every person who challenges another to engage in any such fight as is specified in the last section; every person who accepts any such challenge; every person who knowingly forwards, carries or delivers any such challenge; and every person who bets, stakes or wagers any money or property upon the result of any such fight, or who undertakes to hold any money or property so betted, staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

What constitutes a challenge.

(2321) § **13**. Any words spoken or written or any signs uttered or made to any person, expressing or implying or intending to express or imply a desire, request, invitation, or demand to engage in any fight, such as is mentioned in the preceding section, are deemed a challenge within the meaning of the last section.

Leaving the territory to engage in prize fight.

(2322) § **14**. Every person who leaves this Territory with the intent to elude any of the provisions of the last three sections, and to commit any act out of this Territory such as is prohibited by them, and who does any act which would be punishable under these provisions, if committed within this Territory, is punishable in the same manner as he would have been in case such act had been committed within this Territory.

Place of trial.

(2323) § **15**. Such person may be indicted and tried in any county within this Territory,

Duty of peace officers.

(2324) § **16**. It is the duty of all sheriffs, constables, policemen and watchmen, who have reasonable grounds to believe that any offense specified in section 2319 is about to be committed within their jurisdiction, to make complaint under the provisions of this act to some magistrate within their jurisdiction.

Neglect of duty by officer a misdemeanor.

(2325) § **17**. Every sheriff, constable, policeman or watchman, who wilfully neglects the duty prescribed by the last section, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, he forfeits his office.

Forcible entry and detainer a misdemeanor.

(2326) § **18**. Every person guilty of using or procuring, encouraging or assisting another to use any force, or violence in entering upon or detaining any lands or other possessions of another,

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except in the cases and manner allowed by law, is guilty of a misdemeanor.

Returning to possession after lawful removal.

(2327) § **19.** Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterward, without authority by law, returns to settle or reside upon such lands, is guilty of a misdemeanor.

Unlawful intrusion upon lands.

(2328) § **20.** Every person who intrudes or squats upon any lot or piece of land within the bounds of any incorporated city or village without license or authority from the owner thereof, or who erects or occupies thereon any hut, hovel, shanty, or other structure whatever, without such license or authority; and every person who places, erects or occupies within the bounds of any street or avenue of such city or village, any hut, hovel, shanty, or other structure whatever, is guilty of a misdemeanor.

Discharging firearms in public place.

(2329) § **21.** Every person who wilfully discharges any species of firearm, air gun or other weapon, or throws any other missile in any public place, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a misdemeanor.

Privileges of witnesses.

(2330) § **22.** No person shall be excused from giving evidence upon any investigation or prosecution for any of the offenses specified in this article, upon the grounds that such testimony or evidence might tend to convict him of a crime. But such answer or evidence shall not be received against him upon any criminal proceeding or prosecution, except in a prosecution against him for perjury committed in giving such testimony.

ARTICLE 40.—OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THE TERRITORY.

SECTION.
1. Embezziement and false accounts by officers.
2. Other violations of official conduct.
3. Fraud by officers.
4. Refusal of officer to perform duty.
5. Obstructing the collection of taxes.
6. Applies to all officers.
7. Wilful neglect by territorial officer.
8. Fraud in quality of goods.
9. Auctioneer committing a fraud.
10. Injuring public buildings.
11. Seizing military stores:
12. False statements regarding taxes.

Embezzlement and false accounts by officers.

(2331) § **1.** Every public officer, and every deputy or clerk of any such officer, and every other person receiving any moneys on behalf of or for account of this Territory, or of any department of the government of this Territory, or any bureau or fund created by law and in which this Territory or the people thereof, are directly or indirectly interested, who either:

First. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money received by him as such officer, clerk or deputy, or otherwise, on behalf of this Territory, or the people thereof, or in which they are interested; or,

Second. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to any moneys

so received by him, on behalf of the Territory, or the said people, or in which they are interested; or,

Third. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

Fourth. Wilfully omits or refuses to pay over to this Territory or its officer or agent authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same,

Is guilty of a felony.

(2332) § **2.** Every officer or other person mentioned in the last section, who wilfully disobeys any provisions of law regulating his official conduct, in cases other than those specified in that section, is guilty of a misdemeanor. Other violation of official conduct.

(2333) § **3.** Every public officer, being authorized to sell or lease any property, or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor. Fraud by officer.

(2334) § **4.** Every register of deeds, judge of the probate court, district attorney, county commissioner, sheriff, coroner or county superintendant of public schools, who wilfully fails or refuses to perform the duties of his office according to law, is guilty of a misdemeanor. Refusal of officer to perform duty.

(2335) § **5.** Every person who wilfully obstructs or hinders any public officer form collecting any revenue, taxes, or other sums of money in which, or any part of which the people of this Territory are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor. Obstructing the collection of taxes.

(2336) § **6.** The provisions of the second preceding section shall also apply to county treasurers, justices of the peace and all other county and precinct officers. Applies to all officers.

(2337) § **7.** Every Territorial Auditor, Territorial Treasurer, Superintendent of Public Instruction for this Territory, or any other Territorial officer who wilfully neglects or refuses to perform the duties of his office, as prescribed by law, is guilty of a misdemeanor. Wilful neglect by territorial officers.

(2338) § **8.** Every person carrying on, interested in, or employed about the business of selling property or goods by auction, who sells any goods or property in a damaged condition which he offers as sound or in a good condition, is guilty of a misdemeanor. Fraud in quality of goods.

(2339) § **9.** Every auctioneer, and every partner or clerk of any auctioneer, and every person whatever in any way connected in business with an auctioneer, who commits any fraud or deceit, or by any fraudulent means whatever seeks to evade or defeat the provisions of the laws of this Territory relating to auctions, now in force, or that may hereafter be enacted, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable in treble damages to any party injured thereby. Auctioneer committing a fraud.

(2340) § **10.** Every person who wilfully burns, destroys, or injures any public buildings or improvements in this Territory, is punishable by imprisonment in the Territorial prison not exceeding five years. Injuring public buildings

Seizing military stores.

(2341) § **11.** Every person who enters any fort, magazine, arsenal, armory, arsenal yard, or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the people of this Territory, and every person who enters any such place with intent so to do, is punishable by imprisonment in the Territorial prison not exceeding ten years.

False statement regarding taxes.

(2342) § **12.** Every person who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, wilfully states any material matter which he knows to be false, is guilty of a misdemeanor.

ARTICLE 41.—ARSON.

SECTION.		SECTION.	
1.	Arson defined.	8.	Malice inferred.
2.	Building defined.	9.	No intent to destroy.
3.	Inhabited building defined.	10.	Contiguous buildings.
4.	Night defined.	11.	Degrees of arson.
5.	Burning defined.	12.	Arson in the first degree.
6.	Ownership not necessary.	13.	Same, punishment.
7.	Variance in the proof.	14.	Arson in second degree.

Arson defined

(2343) § **1.** Arson is the wilful and malicious burning of a building, with intent to destroy it.

Building defined.

(2344) § **2.** Any bridge, edifice, vessel, structure, house or other erection with walls or roof in whole or in part is a building within the meaning of the last section.

Inhabited building defined.

(2345) § **3.** Any building is deemed an "inhabited building," within the meaning of this article, any part of which has usually been occupied by any person lodging therein at night.

Night time defined.

(2346) § **4.** The words "night time," in this article include the period between sunset and sunrise.

Building defined.

(2347) § **5.** To constitute a burning within the meaning of the first section of this article it is not necessary that the building set on fire should be destroyed. It is sufficient that the fire is applied so as to take effect upon the substance of the building.

Ownership not necessary.

(2348) § **6.** To constitute arson it is not necessary that another person than the accused should have had ownership in the building set on fire. It is sufficent that at the time of burning another person was rightfully in the possession of, or was actually occupying, such building, or any part thereof.

Variance in proof.

(2349) § **7.** An omission to designate, or error in designating in indictment for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears that upon the whole description given of the building, it is sufficiently identified to enable the prisoner to prepare his defense.

Malice defined.

(2350) § **8.** Malice sufficent to constitute arson is inferred from proof that the prisoner committed an act of burning a building, and that some other person was rightfully in possession of, or actually occupying any part thereof. It is not necessary that the accused should have had actual knowledge of such possession or occupany or should have intended to injure any person.

(2351) § **9.** But the burning of a building under circumstances which show beyond a reasonable doubt that there was no intent to destroy it is not arson. No intent to destroy.

(2352) § **10.** Where any appurtenance to any building is so situated with reference to such building, or where any building is so situated with reference to another building that the burning of one will manifestly endanger the other, a burning of the one is deemed the burning of the other, within the foregoing definition of arson, and as against any person actually participating in the original setting fire, as of the moment when the fire from the one shall communicate to and burn the other. Contiguous buildings.

(2353) § **11.** Arson is divided in two degrees. Degrees of arson.

(2354) § **12.** Arson in the first degree is: Arson in the first degree.

First. Maliciously burning in the night time an inhabited building in which there is at the time some human being, or,

Second. Maliciously burning in the night time a structure adjoining to or within the curtilage of an inhabited building in which there is at the time some human being, and in such a way that such inhabited building is endangered; or,

Third. Maliciously burning in the day time any inhabited building or structure in which merchandising is carried on; or,

Fourth. Maliciously burning in the night time any uninhabited building in which merchandising is carried on, or in which there is at the time any cattle, horses, hogs or sheep. Arson committed in any other way is arson in the second degree.

(2355) § **13.** Arson in the first degree is punishable by imprisonment in the Territorial prison as follows: Same, punishment

First. If committed as designated in the first paragraph of the foregoing section, for a term of not less than twenty years, nor more than thirty years.

Second. If committed as designated in the second, third or fourth paragraph of said section, not less than ten nor more than twenty years.

(2356) § **14.** Arson in the second degree is punishable by imprisonment in the Territorial prison as follows: Arson in second degree.

First. If committed in the night time not less than five nor more than ten years.

Second. If committed in the day time not less than two nor more than seven years.

ARTICLE 42.—BURGLARY AND HOUSE BREAKING.

SECTION.		SECTION.	
1	Burglary in first degree.	6.	Punishment of burglary.
2	Burglary in second degree.	7.	Burglar's implements.
3.	Same; open door or window.	8.	Entering buildings.
4	Same; inner door.	9.	Dwelling house defined.
5	Same	10.	Night time defined.

(2357) § **1.** Every person who breaks into and enters in the night time the dwelling house of another, in which there is at the time some human being, with intent to commit some crime therein, either: Burglary in first degree.

First. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window of such house or the lock or bolts of such door, or the fastening of such window or shutter; or,

Second. By breaking in any other manner, being armed with a dangerous weapon or being assisted or aided by one or more confederates then actually present; or,

Third. By unlocking an outer door by means of false keys or by picking the lock thereof, or by lifting a latch or opening a window, is guilty of burglary in the first degree.

Burglary in second degree.

(2358) § **2.** Every person who in the day time does the act designated in the first section of this article is guilty of a burglary in the second degree.

Same.

(2359) § **3.** Every person who, having entered the dwelling house of another in the night time, through an open outer door or window, or other aperture not made by such person, breaks any inner door, window, partition, or other part of such house, with intent to commit any crime, is guilty of burglary in the second degree.

Same.

(2360) § **4.** Every person who, being lawfully in any dwelling house, breaks in the night time any inner door of the same house with intent to commit any crime, is guilty of burglary in the second degree.

Same.

(2361) § **5.** Every person who breaks and enters in the day time or in the night time, either:

First. Any building within the curtilage of a dwelling house, but not forming a part thereof; or,

Second. Any building or any part of any building, booth, tent, railroad car, vessel or other structure or erection in which any property is kept, with intent to steal therein or to commit any felony, is guilty of burglary in the second degree.

Punishmcnt of burglary

(2362) § **6.** Burglary is punishable by imprisonment in the Territorial prison as follows:

First. Burglary in the first degree for any term not less than seven years nor more than twenty years.

Second. Burglary in the second degree not exceeding seven years and not less than two years.

Burglar's implement's.

(2363) § **7.** Every person who, under circumstances not amounting to a felony has in his possession any dangerous offensive weapon or instrument whatever, or any pick-lock, crow, key, bit, jack, jimmy, nippers, pick, betty or other implement of burglary, with intent to break and enter any building or part of any building, booth, tent, railroad car, vessel or other structure or erection and to commit any felony therein, is guilty of a misdemeanor.

Entering buildings.

(2364) § **8.** Every person who, under circumstances not amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, railroad car, vessel, or other structure or erection with intent to commit any felony, larceny, or malicious mischief, is guilty of a misdemeanor.

Dwelling house defined.

(2365) § **9.** The term "dwelling house" as used in this article, includes every house or edifice, any part of which has usually

been occupied by any person lodging therein at night, and any structure joined to and immediately connected with such a house or edifice.

(2366) § **10**. The words "night time" in this article includes the period between sunset and sunrise. Night time defined.

ARTICLE 43.—FORGERY AND COUNTERFEITING.

SECTION.
1. Forgery of wills and deeds.
2 Forgery of public securities.
3. Forgery of public and corporate seals.
4. Forgery of records and offical returns.
5. Making false entries in book of record.
6. Making false certificate of acknowledgment.
7. False bank note plate.
8. Imitation of genuine bank note defined.
9 Sale of forged evidences of debt.
10 Having forged evidences in possession.
11. Other forged instruments.
12. Issuing spurious certificate of stock.
13. Reissuing cancelled certificate of stock
14. False evidences of debt of corporation.
15. Counterfeiting coin.
16. Counterfeiting coin for exportation.
17. Forging process of court or instrument affecting title to property.
18. Making false entries in public books.
19. Forging passage tickets.
20. Forging United States stamps.
21. Making false entries in corporate books.
22. Employe of corporations making false enteries.
23. Having counterfeit coin in possession.
24 Punishment for forgery.
25. Approving forged instrument or coin.
26. Falsely obtaining signature.
27. Fraudulently signing one's name.
28. Fraudulently endorsing one's name.
29. Erasures and obliterations.
30. Writing and written defined.
31 Signing fictitious name.

(2367) § **1**. Every person who, with intent to defraud, forges, counterfeits or falsely alters: Forgery of wills and deeds.

First. Any will or codicil of real or personal property, or any deed or other instrument being or purporting to be the act of another, by which any right or interest in real property is, or purports to be, transferred, conveyed or in any way changed or affected; or,

Second. Any certificate or indorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any officer duly authorized to make such certificate or indorsement; or,

Third. Any certificate of the proof of any deed, will, codicil or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any court or officer duly authorized to make such certificate,

Is guilty of forgery in the first degree.

(2368) § **2**. Every person who, with intent to defraud, forges, counterfeits, or falsely alters: Forgery of public securities.

First. Any certificate or other public security, issued or purporting to have been issued under the authority of this Territory, by virtue of any law thereof, by which certificate or other public security, the payment of any money absolutely or upon any contingency is promised, or the receipt of any money or property acknowledged; or,

Second. Any certificate of any share, right or interest in any public stock created by virtue or any law of this Territory, issued or purporting to have been issued by any public officer, or any other evidence of any debt or liability, of the people of this

Territory, either absolute or contingent, issued or purporting to have been issued by any public officer; or,

Third. Any indorsement or other instrument transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest.

Is guilty of forgery in the first degree.

Forgery of public and corporate seals.

(2369) § **3**. Every person who, with intent to defraud, forges, or counterfeits the great or privy seal of this Territory, the seal of any public office authorized by law, the seal of any court of record, including judge of probate seals, or the seal of any corporation created by the laws of this Territory, or of any state, government or country, or any other public seal authorized or recognized by the laws of this Territory, or of any other state, government or country, or who falsely makes, forges or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

Forgery of records and official returns.

(2370) § **4**. Every person who, with intent to defraud, falsely alters, destroys, corrupts or falsifies:

First. Any record of any will, codicil, conveyance or other instrument, the record of which is, by law, evidence; or,

Second. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity; or,

Third. The return of any officer, court or tribunal to any process of any court,

Is guilty of forgery in the second degree.

Making false entries in books of record.

(2371) § **5**. Every person who, with intent to defraud, falsely makes, forges or alters, any entry in any book of records, or any instrument purporting to be any record or return specified in the last section, is guilty of forgery in the second degree.

Making false certificate of acknowledgment.

(2372) § **6**. If any officer authorized to take the acknowledgment or proof of any conveyance of real property, or of any other instrument which by law may be recorded, knowingly and falsely certifies that any such conveyance or instrument was acknowledged by any party thereto, or was proved by any subscribing witness, when in truth such conveyance or instrument was not acknowledged or proved as certified, he is guilty of forgery in the second degree.

False bank note plates

(2373) § **7**. Every person who makes or engraves, or causes or procures to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit or other evidence of debt issued by any banking corporation or association, or individual banker, incorporated or carrying on business under the laws of this Territory, or of any other state, government or country, without the authority of such bank, or has or keeps in his custody or possession any such plate, without the authority of such bank, with intent to use or permit the same to be used for the purpose of taking therefrom any impression, to be passed, sold or altered, or has or keeps in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same

filled up and completed for the purpose of being passed, sold or altered; or makes or causes to be made, or has in his custody or possession, any plate upon which are engraved any figures, or words, which may be used for the purpose of falsely altering any evidence of debt issued by any such bank, with intent to use the same, or to permit them to be used for such purpose, is guilty of forgery in the second degree.

Imitation of genuine bank note defined.

(2374) § **8.** Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument imitated, in either of the following cases:

First. When the engraving on such plate resembles and conforms to such parts of the genuine instrument as are engraved; or,

Second. When such plate is partly finished, and the part so finished resembles and conforms to similar parts of the genuine instrument.

Sale of forged evidences of debt.

(2375) § **9.** Every person who sells, exchanges or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft, or other evidence of debt, or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed, or who offers any such note or other instrument for sale, exchange or delivery for any consideration, with the like knowledge and intent, or who receives any such note or other instrument upon a sale, exchange or delivery for any consideration with the like knowledge and intent, is guilty of forgery in the second degree.

Having forged evidence of debt with intent to utter the same.

(2376) § **10.** Every person who, with intent to defraud, has in his possession any forged, altered or counterfeit negotiable note, bill, draft or other evidence of debt issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this Territory or of any other state, government or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is guilty of forgery in the second degree.

Other forged instruments.

(2377) § **11.** Every person who has in his possession any forged or counterfeited instrument, the forgery of which is hereinbefore declared to be punishable, other than such as are enumerated in the last section, knowing the same to be forged, counterfeited or falsely altered, with intent to injure or defraud by uttering the same to be true, or as false, or by causing the same to be uttered, is guilty of forgery in the second degree.

Issuing spurious certificates of stock.

(2378) § **12.** Every officer, and every agent of any corporation or joint stock association formed or existing under or by virtue of the laws of this Territory, or of any other state, government or country, who, within this Territory, wilfully signs or procures to be signed, with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who wilfully issues, sells or pledges, or causes to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation

or association, whether of full paid shares or otherwise, or of any interest in its property or profits, or of any certificate or other evidence of such ownership, transfer or interest, or any instrument purporting to be a certificate or other evidence of such ownership, transfer or interest, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or other managing body of such corporation or association having authority to issue the same, is guilty of forgery in the second degree.

Reissuing cancelledcertificates of stock.

(2379) § **13.** Every officer, and every agent of any corporation or joint stock association formed or existing under or by virtue of the laws of this Territory, or of any other state, government or country, who, within this Territory, wilfully reissues, sells or pledges, or causes to be reissued, sold or pledged, any surrendered or cancelled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, or of an interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree.

False evidences of debt; corporation.

(2380) § **14.** Every officer, and every agent of any corporation, municipal or otherwise, of any joint stock association formed or existing under or by virtue of the laws of this Territory, or of any other state, government or country, who, within this Territory, wilfully signs or procures to be signed with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who wilfully issues, sells or pledges, or caused to be issued, sold or pledged, any false or fraudulent bond or other evidence of debt against such corporation or association of any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or common council or other managing body of officers of such corporation having authority to issue the same, is guilty of forgery in the second degree.

Counterfeiting coin.

(2381) § **15.** Every person who counterfeits any gold or silver coin, whether of the United States or any foreign government or country, with intent to sell, utter, use or circulate the same as genuine, within this Territory, is guilty of forgery in the second degree.

Counterfeiting coin for exportation.

(2382) § **16.** Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign country or government, with intent to export the same, or permit them to be exported to injure or defraud any foreign government, or the subjects thereof, is guilty of forgery in the second degree.

Forging process of court or title to property, etc.

(2383) § **17.** Every person who, with intent to defraud, falsely marks, alters, forges or counterfeits:

First. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate, or officer of being or purporting to be any pleading, proceeding, bond or undertaking filed or entered in any court, or being or purporting to be any license or authority authorized by any statute; or,

Second. Any instrument of writing, being or purporting to be

the act of another by which any pecuniary demand of obligation is, or purports to be created, increased, discharged or diminished, or by which any rights or property whatever, are, or purports to be, transferred, conveyed, discharged, diminished, or in any manner affected, the punishment of which is not herein before prescribed, by which false marking, altering, forging or counterfeiting, any person may be affected, bound or in any way injured in his person or property, is guilty of a forgery in the second degree.

Making false entries in public books.

(2384) § **18**. Every person who, with intent to defraud, makes any false entry or falsely alters any entry made in any book of accounts kept in the office of the Auditor of this Territory, or in the office of the Treasurer of this Territory, or of any county treasurer, by which any demand or obligation, claim, right or interest either against or in favor of the people of this Territory, or any county or town, or any individual, is or purports to be discharged, diminished, increased, created, or in any manner affected, is guilty of forgery in the second degree.

Forging tickets of passage.

(2385) § **19**. Every person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check or other paper or writing to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance, and every person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery any such ticket, knowing the same to have been forged, counterfeited or falsely altered is guilty of forgery in the second degree.

Forging United States postage stamps.

(2386) § **20**. Every person who forges, counterfeits or alters any postage or revenue stamp of the United States, or who sells or offers to keep for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the second degree.

False entries in corporation books.

(2387) § **21**. Every person who, with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this Territory, or in any book of accounts kept by any such corporation or its officers, and delivered or intended to be delivered to any person dealing with such corporation, by which any pecuniary obligation, claim or credit is, or purports to be, discharged, diminished, increased, created or in any manner affected, is guilty of forgery in the second degree.

Employe of corporations making false entries.

(2388) § **22**. Every person who being a member or officer or in the employment of any corporation, association or partnership, falsifies, alters, erases, obliterates or destroys any account or book of accounts or records belonging to such corporation, association or partnership, or appertaining to their business or makes any false entries in such account or book or keeps any false account in such business with intent to defraud his employers, or to conceal any embezzlement of their money, or property, or any defalcation or other misconduct, committed by any person in the management of their business, is guilty of forgery in the second degree.

Having counterfeit coin in possession.

(2389) § **23**. Every person who has in his possession any counterfeit of any gold or silver coin, whether of the United

States of any foreign country or government, knowing the same to be counterfeit, with intent to sell or to use, circulate or export the same, as true or as false, or by causing the same to be uttered or passed, is guilty of forgery in the second degree.

Punishment for forgery.

(2390) § **24**. Forgery is punishable by imprisonment in the Territorial prison as follows:

First. Forgery in the first degree by imprisonment not less than seven years nor more than twenty.

Second. Forgery in the second degree not exceeding seven years.

Approving forged instruments or coin.

(2391) § **25**. Every person who, with intent to defraud, utters or publishes as true any forged, altered or counterfeited instrument or any counterfeit gold or silver coin, the forging, altering or counterfeiting of which is hereinbefore declared to be punishable, knowing such instrument or coin to be forged, altered or counterfeited, is guilty of forgery in the second degree.

Falsely obtaining signature.

(2392) § **26**. Every person who, by any false representation, artifice or deceit procures from another his signature to any instrument, the false making of which would be forgery, and which the party signing would not have executed it had he known the facts and effect of the instrument, is guilty of forgery in the second degree.

Fraudulently signing ones own name as the act of another of the same name

(2393) § **27**. Every person who, with intent to defraud, makes or subscribes any instrument in his own name, intended to create, increase, discharge, defeat or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and utters or passes such instrument, under the pretense that it is the act of another who bears the same name, is guilty of forgery in the same degree as if he had forged the instrument of a person bearing a different name from his own.

Fraudulently indorsing one's own name as the act of another bearing same name.

(2394) § **28**. Every person who, with intent to defraud, indorses any negotiable instrument in his own name, and utters or passes such instrument, under the fraudulent pretense that it is endorsed by another person who bears the same name, is guilty of forgery in the same degree as if he had forged the indorsement of a person bearing a different name from his own.

Erasures and obliterations.

(2395) § **29**. The total or partial erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property is or is intended to be created, increased, discharged, diminished or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing.

Writing and written defined.

(2396) § **30**. Every instrument partly printed and partly written, or wholly printed with a written signature thereto, and every signature of an individual, firm or corporation, or of any officer of such body, and every writing purporting to be such signature, is a writing or a written instrument, within the meaning of the provisions of this article.

Signing fictitious names.

(2397) § **31**. The false making or forging of an evidence of debt purporting to have been issued by any corporation and bearing the pretended signature of any person as an agent or officer of such corporation, is forgery in the same degree as if such person

was at the time an officer or agent of such corporation; notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

ARTICLE 44.—LARCENY.

SECTION.
1. Larceny defined.
2. Larceny of lost property.
3 Larceny divided.
4 Grand and petit larceny.
5. Punishment for grand larceny.
6. Punishment for petit larceny.
7 Grand larceny in house or vessel.
8 Grand larceny in night time from person.
9- Larceny of written instrument.
10. Larceny of passage ticket.
11. Larceny of securities.
12. Larceny of severed fixtures.
13. Receiving stolen property.
14. Fraudulent consumption of gas.
15. Larceny out of the territory.

(2398) § **1.** Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof. Larceny defined.

(2399) § **2.** One who finds lost property under circumstances which gives him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made such effort to find the owner and restore the property to him as the circumstances render reasonable and just, is guilty of larceny. Larceny of lost property.

(2400) § **3.** Larceny is divided into two degrees; the first of which is termed grand larceny, the second petit larceny. Larceny divided.

(2401) § **4.** Grand larceny is larceny committed in either of the following cases:

First. When the property taken is of value exceeding twenty dollars.

Second. When such property, although uot of value exceeding twenty dollars in value, is taken from the person of another.

Larceny in other cases is petit larceny.

(2402) § **5.** Grand larceny is punishable by imprisonment in the Territorial prison not exceeding five years. Punishment for grand larceny.

(2403) § **6.** Petit larceny shall be punishable by a fine of not less than ten dollars or more than one hundred dollars, or imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment, at the discretion of the court. Punishment for petit larceny.

(2404) § **7.** When it appears upon the trial of an indictment for grand larceny that the larceny alleged was committed in any dwelling house or vessel, the offender may be punished by imprisonment in the Territorial prison not exceeding eight years. Grand larceny in house or vessel.

(2405) § **8.** When it appears upon such trial, that such larceny was committed by stealing in the night time, from the person of another, the offender may be punished by imprisonment in the Territorial prison not exceeding ten years. Grand larceny in night time from person.

(2406) § **9.** If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereon, or secured to be paid thereby, and remaining unsatisfied, or Larceny of written instrument.

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which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, as the case may be, shall be deemed the value of the thing stolen.

Larceny of passage ticket.

(2407) § **10.** If the thing stolen is any ticket, or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance, shall be deemed the value of such ticket.

Larceny of securities.

(2408) § **11.** All the provisions of this article shall apply where the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, though the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

Larceny of severed fixture.

(2409) § **12.** Any fixture or part of realty, the instant it is severed from the realty becomes personal property, and the subject of larceny within the meaning of this article.

Receiving stolen property

(2410) § **13.** Every person who buys or receives, in any manner, upon any consideration, any personal property of any value whatsoever, that has been stolen from any other, knowing the same to have been stolen, is punishable by imprisonment in the Territorial prison not exceeding five years, or in the county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

Fraudulent consumption of gas.

(2411) § **14.** Every person who, with intent to defraud, makes or causes to be made, any pipe or other instrument or contrivance, and connects the same, or causes it to be connected, with any pipe laid for conducting illuminating gas, so as to conduct gas to a point where the same may be consumed without its passing through the meter providing for registering the quantity consumed, or in any other manner so as to evade paying therefor, and every person who with like intent injures or alters any gas meter, or obstructs its action, is guilty of a misdemeanor.

Larceny out of the territory.

(2412) § **15.** Every person who steals the property of another in any other state or country, and brings the same into this Territory may be convicted and punished in the same manner as if such larceny had been committed in this Territory; and such larceny may be charged to have been committed in any town or city into or through which such stolen property has been brought.

ARTICLE 45.—EMBEZZLEMENT.

SECTION.
1. Emezzlement defined.
2. When officer is guilty of embezzlement.
3. When carrier or other person is guilty.
4. When trustee is guilty.
5. Bailee guilty.
6. Clerk or servant.

SECTION.
7. Distinct taking not necessary.
8. Evidence of debt subject to embezzlement.
9. Property taken under claim of title.
10. Intent to restore no defense.
11. Mitigation of punishment.
12. Punishment of embezzlement.

(2413) § **1.** Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted. Embezzlement defined.

(2414) § **2.** If any person, being an officer, director, trustee, clerk, servant or agent of any association, society or corporation, public or private, fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secrets it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement. When officer is guilty of embezzlement.

(2415) § **3.** If any carrier or other person having under his control personal property for the purpose of transportation for hire, fraudulently appropriates it to any use or purpose inconsistent with the safe keeping of such property and its transportation according to his trust, he is guilty of embezzlement, whether he has broken the packages in which such property is contained, or has otherwise separated the items thereof, or not. When carrier or other person is guilty of embezzlement.

(2416) § **4.** If any person being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator or collector, or being otherwise entrusted with or having in his control property for the use of any other person, or for any public or benevolent purpose, fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement. When trustee, etc., is guilty of embezzlement.

(2417) § **5.** If any person being entrusted with any property as bailee, or with any power of attorney for the sale or transfer thereof, fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, he is guilty of embezzlement, whether he has broken the package or otherwise determined the bailment or not. Bailee guilty of embezzlement.

(2418) § **6.** If any clerk or servant of any private person or co-partnership or corporation, except apprentices and persons within the age of eighteen years, fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of any other person which has come into his control or care by virtue of his employment as such clerk or servant, he is guilty of embezzlement. Clerk or servant guilty of embezzlement.

(2419) § **7.** A distinct act of taking is not necessary to constitute embezzlement, but any fraudulent appropriation, conversion or use of property, coming within the above prohibitions is sufficient. Distinct taking not necessary.

(2420) § **8.** Any evidence of debt, negotiable by delivery only, and actually executed, is equally the subject of embezzlement whether it has been delivered or issued as a valid instrument or not. Evidence of debt subject of embezzlementr

(2421) § **9.** Upon any indictment for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith even though such claim is untenable. But this provision shall not excuse the retention of the property of another, to offset or pay demand held against him. Property taken under claim of title.

(2422) § **10.** The fact that the accused intended to restore Intent to restore no defense.

the property embezzled, is no ground of defense, or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

Mitigation of punishment

(2423) § **11.** Whenever it is made to appear that prior to any information laid before a magistrate charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such is not a ground of defense to the indictment, but it authorizes the court to mitigate punishment in its discretion.

Punishment for embezzlement

(2424) § **12.** Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled. And where the property embezzled is an evidence of debt or right in action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

ARTICLE 46.—EXTORTION.

SECTION.		SECTION.	
1.	Extortion defined.	5.	Obtaining signature by extortion.
2.	What threats constitutes extortion.	6.	Sending threatening letters.
3.	Punishment for extortion.	7.	Attempts to extort money.
4.	Extortion under color of official right.		

Extortion defined.

(2425) § **1.** Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right.

What threats constitute extortion.

(2426) § **2.** Fear such as will constitute extortion, may be induced by a threat, either:

First. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or,

Second. To accuse him, or any relative of his or member of his family, of any crime; or,

Third. To expose, or impute to him, or them, any defamity or disgrace; or,

Fourth. To expose any secret affecting him or them.

Punishment for extortion.

(2427) § **3.** Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat such as is mentioned in the last section, is punishable by imprisonment in the Territorial prison not exceeding five years.

Extortion under color of official right.

(2428) § **4.** Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this chapter, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor.

Obtaining signature by extortion.

(2429) § **5.** Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action were obtained.

Sending threatening letter.

(2430) § **6.** Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in the second section of this article, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Attempting to export money.

(2431) § **7.** Every person who unsuccessfully attempts by means of any verbal threat such as is specified in the second section of this article, to extort money or other property from another is guilty of a misdemeanor.

ARTICLE 47.—CONCEALED WEAPONS.

SECTION.	
1.	Prohibited weapons enumerated.
2	Same.
3.	Minors.
4.	Public officials, when privileged.
5.	Arms, when lawful to carry.
6.	Degree of punishment.
7.	Public buildings and gatherings.
8.	Intent of persons carrying weapons.
9.	Pointing weapon at another.
10.	Violation of certain sections.

Prohibited weapons enumerated.

(2432) § **1.** It shall be unlawful for any person in the Territory of Oklahoma to carry concealed on or about his person, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided.

Same.

(2433) § **2.** It shall be unlawful for any person in the Territory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided.

Minors.

(2434) § **3.** It shall be unlawful for any person within this Territory, to sell or give to any minor any of the arms or weapons designated in sections one and two of this article.

Public officials, when privleged.

(2435) § **4.** Public officers while in the discharge of their duties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under no other circumstances: *Provided, however*, That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person..

Arms, when lawful to carry.

(2436) § **5.** Persons shall be permitted to carry shot-guns or rifles for the purpose of hunting, having them repaired, or for killing animals, or for the purpose of using the same in public muster or military drills, or while travelling or removing from one place to another, and not otherwise.

Degree of punishment.

(2437) § **6.** Any person violating the provisions of any one of the foregoing sections, shall on the first conviction be adjudged guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars nor more than fifty dollars, or by imprisonment in the county jail not to exceed thirty days or both at the discretion of the court. On the second and every subsequent con-

viction, the party offending shall on conviction be fined not less than fifty dollars nor more than two hundred and fifty dollars or be imprisoned in the county jail not less than thirty days nor more than three months or both, at the discretion of the court.

Public buildings and gatherings

(2438) § **7.** It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article.

Intent of persons carrying weapons.

(2439) § **8.** It shall be unlawful for any person in this Territory to carry or wear any deadly weapons or dangerous instrument whatsoever, openly or secretly, with the intent or for the avowed purpose of injuring his fellow man.

Pointing weapons at another.

(2440) § **9.** It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise.

Violation of section seven.

(2441) § **10.** Any person violating the provisions of section seven, eight or nine of this article; shall on conviction, be punished by a fine of not less than fifty dollars, nor more than five hundred and shall be imprisoned in the county jail for not less than three not more than twelve months.

ARTICLE 48.—FALSE PERSONATION AND CHEATS.

SECTION.
1. False impersonation, punishment for.
2. False impersonation and receiving money.
3. Personating officers and others.
4. Unlawful wearing of grand army badge.
5. Fines, how paid.
6. Obtaining property under false pretenses.
7. False representation of charitable purposes.
8. Falsely representing banking corporations.
9. Using false check.
10. Holding mock auction.

Punishment for false impersonation

(2442) § **1.** Every person who falsely personates another, and in such assumed character, either:

First. Marries or pretends to marry, or to sustain the marriage relation toward another, with or without the connivance of such other person; or,

Second. Becomes bail or surety for any party, in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

Third. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or,

Fourth. Does any other act whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person.

Is punishable by imprisonment in the Territorial prison not exceeding ten years.

False impersonation and receiving money or property.

(2443) § **2**. Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

Personating officers and others

(2444) § **3**. Every person who falsely personates any public officer, civil or military, or any fireman or any private individual having special authority by law to perform any act affecting the rights or interests of another, or assumes, without authority, any uniform or badge by which such are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, vexed or annoyed is guilty of a misdemeanor.

Unlawful wearing of grand army badges.

(2445) § **4**. Any person found wearing the badge of the grand army of the republic not entitled to the same by being a member thereof, shall upon conviction before a justice of the peace or other officer having jurisdiction in such cases, be subject to a fine not to exceed twenty-five dollars for each and every offense, together with costs of prosecution.

Disposition of fines

(2446) § **5**. One-fourth of the fine shall be paid to the complainant, the remaining three-fourths to be paid to the county treasurer for the benefit of any honorably discharged soldiers or sailors who may be found needy in such county, and upon application therefor to the county auditor, if there be one, or if not to the chairman of the county board of commissioners, such auditor or chairman of the board shall issue a warrant on the treasurer for so much of such money as he may deem right and proper.

Obtaining property under false pretenses.

(2447) § **6**. Every person who, with intent to cheat or defraud another, designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property, is punishable by imprisonment in the Territorial prison not exceeding three years or in a county jail not exceeding one year, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment.

Obtaining money by false representation of charitable purposes.

(2448) § **7**. Every person who designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property for any alleged charitable or benevolent purpose whatever, is punishable by imprisonment in the Territorial prison not exceeding three years or in a county jail not exceeding one year, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment.

False representation of charitable purposes.

(2449) § **8**. If the false token by which any money or property is obtained, in violation of the first and second preceding sections of this article, is a promissory note or negotiable evidence of debt purporting to be issued by or under the authority of any banking

company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in the Territorial prison not exceeding seven years, instead of by punishment prescribed by those sections.

Using false check.

(2450) § **9**. The use of a matured check or other order for the the payment of money, as a means of obtaining any signature, money or property, such as is specified in the last two sections, by a person who knows that a drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representation is made in respect thereto.

Holding mock auction.

(2451) § **10**. Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the Territorial prison not exceeding three years or in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and, in addition thereto, he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this Territory.

ARTICLE 49.—FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

SECTION.
1. Destroying insured property.
2. False proof of loss in insurance.

Destroying insured property.

(2452) § **1**. Every person who wilfully burns, or in any other manner injures or destroys any property whatever, which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of such person or of any other, is punishable by imprisonment in the Territorial prison not exceeding seven years, and not less than four.

False proof of loss in insurance.

(2453) § **2**. Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes or subscribes any account, certificate, survey, affidavit, proof of loss, or other book, papers or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the Territorial prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

ARTICLE 50.—FALSE WEIGHTS AND MEASURES.

SECTION.
1. False weights and measures,
2. Retaining same knowingly.
3. False weights and measures may be seized.
4. Weights may be tested and destroyed
5. Shall be destroyed, when.
6. Stamping false weight or false tare.

False weights and measures.

(2454) § **1.** If any person with intent to defraud, use a false balance, weight or measure, in the weighing or measuring of anything whatever that is purchased, sold, bartered, shipped or delivered, for sale or barter, or that is pledged, or given in payment, he shall be punished by a fine not exceeding one hundred dollars nor less than five dollars, or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment, and shall be liable to the injured party in double the amount of damages.

Retaining same knowingly.

(2455) § **2.** Every person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, shall be punished as therein provided.

False weights and measures may be seized.

(2456) § **3.** Every person who is authorized or enjoined by law to arrest another person for violation of the first two sections of this article, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Weights may be tested and destroyed.

(2457) § **4.** The magistrate to whom any weight or measure is delivered, pursuant to the last section, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he shall cause it to be destroyed, or to be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require.

Shall be destroyed, when.

(2458) § **5.** Upon the conviction of the accused, such district attorney shall cause any weight or measure in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

Stamping false weight or false tare.

(2459) § **6.** Every person who knowingly marks or stamps false or short weight, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked is guilty of a misdemeanor.

ARTICLE 51.—FRAUDULENT INSOLVENCIES BY INDIVIDUALS.

SECTION.
1. Fraudulent conveyance.
2. Fraudulent removal of property.
3. Assignment to creditor with preference.
4. Frauds in bankruptcy.

Fraudulent conveyance.

(2460) § **1.** Every person who being a party to any conveyance or assignment of any real or personal property, or of any interest therein, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person being privy to or knowing of such conveyance, assignment or charge, who wilfully puts the

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same in use as having been made in good faith, is guilty of a misdemeanor.

Fraudulent removal of property.

(2461) § **2.** Every person who removes any of his property out of any county, with intent to prevent the same from being levied upon by any execution or attachment, or who secretes, assigns, conveys or otherwise disposes of any of his property, with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and every person who receives any such property with such intent, is guilty of a misdemeanor.

Assignment to creditor with preference.

(2462) § **3.** Every person who, knowing that his property is insufficient for the payment of all his lawful debts, assigns, transfers or delivers any property for the benefit of any creditor, or creditors, upon any trusts or condition, that any creditor shall receive a preference or priority over any other, except in the cases in which such preference is expressly allowed to be given by law, or with intent to create such preference or priority, is guilty of a misdemeanor.

Frauds in bankruptcy.

(2463) § **4.** Every person who, upon making or prosecuting any application for a discharge as an insolvent debtor, under the provision of any law now in force, or that may hereafter be enacted, either:

First. Fraudulently presents, or authorizes to be presented on his behalf such application, in a case in which it is not authorized by law; or,

Second, Makes or presents to any court or officer, in support of such application, any petition, schedule, book, account, voucher, or other paper or document, knowing the same to contain any false statement; or,

Three. Fraudulently makes or exhibits, or alters, obliterates or destroys any account or voucher relating to the condition of his affairs, or any entry or statement in such account or voucher; or,

Fourth. Practices any fraud upon any creditor, with intent to induce him to petition for, or consent to such discharge; or,

Fifth. Conspires with or induces any person fraudulently to unite as a creditor in any petition for such discharge, or to practice any fraud in aid thereof,

Is guilty of a misdemeanor.

ARTICLE 52.—DELETERIOUS FOOD.

SECTION.
1. Sale of unwholesome food forbidden; punishment.
2. Adulteration of food or drink forbidden, punishment.
3. Adulterating drugs.
4. Spread of infectious diseases forbidden.
5. Intoxicated person not to prescribe medicine.
6. Poison notices.
7. Contagious diseases among domestic animals.
8. Adulterating milk.

Sale of unwholesome provisions prohibited, punishment.

(2464) §. **1.** Any person who shall sell any kind of diseased, corrupted or unwholesome provisions, whether meat or drink, without first making the fact fully known to the buyers, shall

be punished by imprisonment in the county jail not more than six months, or by fine not exceeding one hundred dollars.

Adulteration of food or drinks forbiddden, punishment.

(2465) § **2**. Any person who shall fraudulently adulterate, for the purpose of sale or shall offer for sale any substance intended for food, or any wine, spirits malt or other spirituous liquors, or any other fluid, intended for drinking, or any candy or sweetmeat with any substance, coloring matter, or anything poisonous, deleterious or injurious to health, or any article of food or drink that is not just what in its purity represented to be, or who shall manufacture, sell or offer for sale, any such adulterated food, liquor, candy or sweet-meat, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding two hundred dollars, and articles so adulterated shall be forfeited and destroyed.

Adulterating drugs.

(2466) § **3**. Any person who shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or offer for sale or sell, any drug or medicine containing any foreign substance to itself or in such a manner as to render the same injurious to health, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars.

Spread of infectious diseases forbidden.

(2467) § **4**. Any person who shall inoculate himself or any other person or shall suffer himself to be inoculated with small-pox or syphilis or gonorrhoea and shall spread or cause to be spread to any other persons with intent to or recklessly be responsible for the spread of or prevalence of such infectious disease, shall be deemed a felon, and upon conviction thereof shall be punished by imprisonment in the Territorial prison not more than five years nor less than two years.

Intoxicated person not to prescribe medicine.

(2468) § **5**. Any person while in a state of intoxication, who shall prescribe any poison, drug or medicine to another person, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars.

Poison, notices.

(2469) § **6**. Any person who shall deposit any poison or poisonous substance, upon the lands or in the building of another person, without first posting up at least three plainly written notices upon such lands and buildings, shall upon conviction thereof, be punished by imprisonment in the county jail not more than ninety days, or by fine not exceeding one hundred dollars.

Contagious diseases among domestic animals.

(2470) § **7**. Any person who shall suffer to run at large, or who shall keep in any place where other animals can have access to or become infected by them, any horse, mare, mule, ass, ox, bull, cow, sheep or other domestic animals owned by him, or in his care or possession, and known by him, or good reason to believe such animal to be infected by glanders, farcy, or Texas mange or other infectious or contagious disease, or who shall bring into this Territory any diseased cattle, shall be punished, upon conviction of the same, by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars.

Adulterating milk.

(2471) § **8**. Any person who shall bring or send to any other person or company or corporation, to be used for the manufacture of butter or cheese, or who shall sell, furnish or supply to any other person, to be used in any manner whatever any milk drawn from a

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cow not in proper condition of health, or any milk adulterated by any deleterious substances, or that has been adulterated with water, or colored by any substance whatsoever, shall be punished by imprisonment in the county jail not more than thirty days or by fine not exceeding fifty dollars, and shall be civilly liable to the party wronged in a sum of not less than fifty dollars.

ARTICLE 53.—FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

SECTION.
1. Fraud in subscription for stock.
2. Fraud in procuring organization of stock company.
3. Unauthorized use of names.
4. Unauthorized loans in banks.
5. Loans not invalid.
6. Sale of bank notes.
7. Circulating excess of bank notes.
8. Officer making guarantee or indorsement.
9. Overdrawing account at bank.
10. Insolvent banker cannot receive deposits.
11. Omitting to enter receipt.
12. Destroying or falsifying books.
13. Publishing false reports of corporation.
14. Refusing to permit inspection of books.
15. Insolvencies deemed fraudulent.
16. How punishable.
17. Violation of duty by officer of corporation.
18. Director presumed to have knowledge.
19. Directors presumed to have assented, when.
20. Same; when director was absent from meeting.
21. Foreign corporations.
22. Director defined.

Fraud in subscription for stock.

(2472) § **1**. Every person who signs the name of a fictitious person to any subscription for, or agreement to take stock in any corporation, existing or proposed; and every person who signs, to any subscription or agreement, the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Fraud in procuring organization of stock company.

(2473) § **2**. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the Territorial prison not exceeding ten years, and not less than three years.

Unauthorized use of names

(2474) § **3**. Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

Unauthorized loan in banks.

(2475) § **4**. Every director of any corporation having banking

powers, who concurs in ahy vote or act of the directors of such corporation, or any of them, by which it is intended, either:

First. To make any loan or discount, by which the whole amount of the loans and discounts of the corporation is made to exceed three times its capital stock then paid in and actually possessed; or,

Second. To make any loan or discount to any director of such corporation, or upon paper upon which any such director is responsible, to an amount exceeding in the aggregate one-third of the capital stock of such corporation, then paid in and actually possessed, is guilty of a misdemeanor.

Loans not invalid.

(2476) § **5**. Nothing in the last section shall render any loan made by the directors of any such corporation, in violation thereof, invalid.

Sale of bank notes.

(2477) § **6**. Every officer or agent of any corporation, having banking powers, who sells, or causes or permits to be sold any bank notes of such corporation, or pledges or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

Circulating excess of bank notes.

(2478) § **7**. Every officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation, to an amount, which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

Officer making guarantee or indorsement.

(2479) § **8**. Every officer or agent of any banking corporation, who makes or delivers any guarantee or indorsement upon behalf of such corporation, whereby it may become liable upon any of its discounted notes, bills or obligations, in any sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.

Overdrawing account at bank.

(2480) § **9**. Every officer, agent, teller, clerk or servant of any bank, banking association or savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, notes or funds of such bank, is guilty of a misdemeanor.

Insolvent banker cannot receive deposits.

(2481) § **10**. No bank, banking house, exchange broker, or deposit office or firm, company, corporation or party engaged in the banking, broker or deposit business, shall accept or receive on deposit, with or without interest, any moneys, bank bills, or notes or United States notes, or United States Treasury notes, or currency, or other notes, bills or drafts circulating as money or currency, when such bank, banking house, exchange broker, or deposit office, firm, company or corporation or party is insolvent; and if any such bank, banking house, exchange broker, or deposit office, firm, company, corporation or party shall receive or accept on deposit any such deposits as aforesaid when insolvent, any

officer, director, cashier, manager, member, party or managing party thereof, knowing of such insolvency, who shall knowingly receive or accept, be accessory, to or permit, connive at the receiving or accepting on deposit therein or thereby, any such deposit as aforesaid, shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the Territorial prison for a term not to exceed ten years, or by imprisonment in the county jail not to exceed one year, or by both fine aud imprisonment, the fine not to exceed ten thousand dollars.

Omitting to enter receipt.

(2482) § **11.** Every director, officer or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association, is guilty of a misdemeanor.

Destroying or falsifying books.

(2483) § **12.** Every director, officer, agent or member of any corporation or joint stock association, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the Territorial prison not exceeding ten years and not less than three, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Publishing false reports of corporation

(2484) § **13.** Every director, officer or agent of any corporation or joint stock association, who knowingly concurs in the making, or publishes any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than as are mentioned in sections 2473 and 2474, or wilfully refuses or neglects to make or deliver any written report, exhibit or statement required by law, is guilty of a misdemeanor.

Refusing to permit inspection of books

(2485) § **14.** Every officer or agent of any corporation having or keeping an office within this Terrifory, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

Insolvencies deemed fraudulent.

(2486) § **15.** Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

How punishable.

(2487) § **16.** In every case of a fraudulent insolvency of a monied corporation, every director thereof who participated in such fraud, if another punishment is prescribed therefor by this

chapter, or any of the acts which are specified as continuing in force, is guilty of a misdemeanor.

Violation of duty by officer of corporation.

(2488) § **17.** Every director of any monied corporation who wilfully does any act, as such director, which is expressly forbidden by law, or wilfully omits to perform any duty expressly imposed upon him as such director, by law, the punishment for which act or omission is not otherwise prescribed by this article, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor.

Director presumed to have knowledge.

(2489) § **18.** Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors, is a violation of this article.

Director presumed to have assented, when.

(2490) § **19.** Every director of a corporation or joint stock association, who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

Same when director was absent from meeting.

(2491) § **20.** Every director of a corporation or joint stock association, although not present at the meeting of the directors at which any act, proceeding or omission of such directors, in violation of this article, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not, within that time, cause or in writing require his dissent from such illegallty to be entered in the minutes of the directors.

Foreign corporation no defense.

(2492) § **21.** It is no defense to a prosecution for a violation of the provisions of this article, that the corporation was one created by the laws of another state, government or country, if it was one carrying on business, or keeping an officer thereof, within this Territory.

Director defined.

(2493) § **22.** The term director, as used in this article, embraces any of the persons having by law the direction or management of the affairs of a corporation by whatever name such persons are described in its charter, or known by law.

ARTICLE 54.—FRAUDULENT ISSUE OF DOCUMENTS OF TITLES TO MERCHANDISE.

SECTION.
1. Fraudulent bill of lading.
2 Fraudulent warehouse receipt.
3 Same; exception.
4 Duplicate receipts or vouchers.

SECTION.
5. Selling goods without consent of holder of bill of lading.
6. Bill of lading or receipt must be cancelled, when.
7. Law does not apply. when.

Fraudulent bill of lading.

(2494) § **1.** Every person being the master, owner or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any car-

rier who delivers any bill of lading, receipt or other voucher, or by which it appears that any merchandise of any description has been shipped on board of any vessel, or delivered to any railroad, express or transportion company or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as express in such bill of lading, receipt or voucher, is punishable by imprisonment in the Territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Frauduleut warehouse receipts.

(2495) § **2**. Every person carrying on the business of a warehouseman, wharfinger or other depositary of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the Territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Same, exception.

(2496) § **3**. No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue.

Duplicate receipts or vouchers.

(2497) § **4**. Every person mentioned in the two first sections of this article who issued any second or duplicate receipt or voucher of a kind specified in those two sections, at a time while any former receipt or voucher for the merchandise specified in the second receipt is out standing and uncancelled, without writing across the face of the same the word, "duplicate", in a plain and legible manner, is punishable by imprisonment in the Territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Selling goods without consent of holder of bill of lading.

(2498) § **5**. Every person mentioned in the two first sections of this article, who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt or voucher has been issued by him without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisment in the Territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Bill of lading cancelled, when.

(2499) § **6**. Every person such as mentioned in the second section of this article, who delivers to another any merchandise for which any bill of lading, receipt or voucher has been issued, unless such receipt or voucher bore upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be cancelled at the time of delivery or unless, in

the case of partial delivery, a memorandum thereof is endorsed upon such receipt or voucher, is punishable by imprisonment in the Territorial prison not exceeding five years or by a fine not exceeding one thousand dollars, or both.

When law does not apply.

(2500) § **7**. The last two sections do not apply where property is demanded by virtue of process of law.

ARTICLE 55.—MALICIOUS INJURIES TO RAILROADS, HIGHWAYS, BRIDGES, TELEGRAPHS AND DITCHES.

SECTION.
1. Injuries to railroads.
2. When death ensues therefrom.
3. Injuries to highways,
4. Obstructing highways.
5. Injury to toll house or gate.
6. Injury to mile boards or guide posts
7. Injury to telegraph lines.
8. Interference with ditches.
9. Same, penalty.

Injuries to railroads.

(2501) § **1**. Every person who maliciously, either:

First. Removes, displaces, injures or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or of any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

Second. Places any obstruction upon the rails or track of any railroad, or any branch, branchway, or turnout connected with any railroad, is punishable by imprisonment in the Territorial prison not exceeding four years, or in a county jail not less than six months.

When death ensues therefrom.

(2502) § **2**. Whenever any offense specified in the last section results in the death of any human being, the offender is punishable by imprisonment in the Territorial prison for not less than four years.

Injuries to highways.

(2503) § **3**. Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, is guilty of felony.

Obstructing highway.

(2504) § **4**. Every person who shall knowingly and wilfully obstruct or plow up, or cause to be obstructed or plowed up, any public highway or public street of any town, except by order of the road supervisors for the purpose of working the same, or injure any bridge on the public highway, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding one hundred dollars, and shall be liable for all damages to person or property by reason of the same.

Injury to toll house or gate.

(2505) § **5**. Every person who maliciously injures or destroys any toll house or turnpike gate is guilty of felony.

Injury to mile boards or guide posts.

(2506) § **6**. Every person who removes or injures any mile board, mile stone or guide post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

Injuring telegraph lines.

(2507) § **7**. Every person who maliciously takes down, removes, injures or obstructs any line of telegraph or any part thereof, or appurtenance or apparatus therewith connected, or severs

any wire thereof, or fraudulently intercepts any message in its passage over such wire, is guilty of a misdemeanor.

Unlawful to interfere with irrigation ditches

(2508) § **8.** It shall be unlawful, for any person or persons, to divert any of the waters from any irrigation ditch, in this Territory, or to interfere in any manner whatever with any irrigation ditch, without first having obtained the permission of the owner of such ditch, or of the person or persons lawfully in charge thereof.

Penalty; jurisdiction of justice of the peace.

(2509) § **9.** Any person or persons violating any of the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than fifty, and any justice of the peace within the county where such offense may be committed shall have the jurisdiction to try and determine all cases arising under the provisions of said section.

ARTICLE 56.—OF MALICIOUS MISCHIEF.

SECTION.

1. Malicious mischief.
2. Following sections not restrictive.
3. Poisoning cattle.
4. Killing, maiming or torturing animals.
5. Abusing domestic animals.
6. Instigating fights between animals.
7. Keeping houses or pits for fighting animals.
8. Wounding or trapping birds in cemetery.
9. Burning buildings or grain.
10. Injuring houses of worship.
11. Destroying buildings with explosives.
12. Endangering human life with explosives.
13. Malicious injury to freehold.
14. Injuring timber, fences, etc.
15. Injuring standing crops.
16. Injury to fruit or melons in day time.
17. Same, in the night time.
18. Injuring fruit trees.
19. Removing or altering land marks.
20. Interfering with piers or dams.
21. Destroying dams.
22. Removing or injuring piles.
23. Removing or masking signal light.
24. Injuring written instructions.
25. Defacing election returns.
26. Opening and reading sealed letters.
27. Disclosing telegraphic dispatches.
28. Secreting telegraphic dispatch
29. Injuring works of art or improvement.
30. Destroying works of literature or art.
31. Breaking gas or water pipes.

Malicious mischief.

(2510) § **1.** Every person who maliciously injures, defaces or destroys any real or personal property not his own, in cases other than such as are specified in the following sections, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof.

Following sections not restrictive.

(2511) § **2.** The specification of the acts enumerated in the following sections of this article is not intended to restrict or qualify the interpretation of the last section.

Poisoning cattle.

(2512) § **3.** Every person who wilfully administers poison to any animal, the property of another, and every person who maliciously exposes any poisonous substance with intent that the same shall be taken by any such animal, is punishable by imprisonment in the Territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

Killing, maiming or torturing animals.

(2513) § **4.** Every person who maliciously kills, maims or wounds any animal, the property of another, or who maliciously

and cruelly beats, tortures or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

Abusing domestic animals.

(2514) § **5.** Every person who shall wilfully or negligently maltreat or abuse any domestic animal by exposure to heat or cold, or by deprivation of food or water, or by leaving hitched in the open air during cold weather or storm, or in the night time, shall, upon conviction, be fined not exceeding twenty-five dollars. Any officer finding an animal so maltreated or abused, shall cause the same to be taken care of, and the charges therefor shall be a lien upon such animal, to be collected thereon as upon a pledge.

Instigating fights between animals.

(2515) § **6.** Every person who maliciously, or for any bet, stake or reward, instigates, or encourages any fight between animals, or instigates or encourages any animal to attack, bite, wound or worry another, is guilty of a misdemeanor.

Keeping houses or pits for fighting animals.

(2516) § **7.** Every person who keeps any house, pit, or other place, to be used in permitting any fight between animals or in any other violation of the last section, is guilty of a misdemeanor.

Wounding or trapping birds in cemetery.

(2517) § **8.** Every person who, within any public cemetery or burying ground, wounds or traps any birds or destroys any bird's nest, or removes any eggs or young birds from any nest; and every person who buys or sells, or offers or keeps for sale, any bird which has been killed or trapped in violation of this section, is punishable by a fine of five dollars for each affense, recoverable by a civil action in any justice's court within the county where the offense is committed, brought in the name of any person making a complaint.

Burning buildings or grain.

(2518) § **9.** Every person who wilfully burns any building not the subject of arson, any stack of grain of any kind, or of any hay, any growing or standing grain, grass, trees, or fence, not the property of such person, is punishable by imprisonment in the Territorial prison not exceeding four years and not less than one year, or by imprisonment in a county jail not exceeding one year.

Injuring house of worship.

(2519) § **10.** Every person who wilfully breaks, defaces, or otherwise injures any house of worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of felony.

Destroying building with gunpowder or other explosive.

(2520) § **11.** Every person who maliciously, by the explosion of gunpowder, or other explosive substance, destroys, throws down, or injures the whole or any part of any building, by means of which the life or safety of any human being is endangered, is punishable by imprisonment in the Territorial prison not exceeding ten years and not less than three.

Endangering human life with explosive

(2521) § **12.** Every person who places in, upon, under, against, or near to any building, any gunpowder or other explosive substance with intent to destroy, throw down or injure the whole or any part thereof, under circumstances that, if such intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of felony.

Chap. 25.

Malicious injury to freehold.

(2522) § **13**. Every person is guilty of a misdemeanor who wilfully commits any trespass by either:

First. Cutting down or destroying any kind of wood or timber, standing or growing upon the lands of another; or, driving or riding through, into, or across any cultivated hedge or tree row, or any grove of ornamental trees or orchard of fruit trees growing upon the land of another, or in any other manner injuring the same; or,

Second. Carrying away any kind of wood or timber that has been cut down, and is lying on such lands; or,

Third. Maliciously severing from the freehold any produce thereof, or anything attached thereto; or,

Fourth. Digging, taking, or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner, or legal occupant thereof, any earth, soil or stone, being a part of the freehold, or severed therefrom at some previous time, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property; or,

Fifth. Digging, taking, or carrying away from any land in any incorporated city or town of this Territory, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue, without the license of the mayor and common council or other governing body of such city or town, or owner of the fee thereof, any earth, soil, or stone under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property.

Injuring timber, fences, etc.

(2523) § **14**. Every person who shall wantonly or maliciously cut, dig up, or injure any timber set out, planted, cultivated, or growing naturally, or who shall wantonly or maliciously open, let down, throw down, or prostrate any fence, gate, or bars, belonging to any enclosure of any description of cultivated and growing timber, or tears down or opens any such fence, gate, or bars, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment, and shall be liable in damages to the party injured.

Injuring standing crops.

(2524) § **15**. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this chapter, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor.

Injuring fruit or melons in the day time.

(2525) § **16**. Every person who maliciously or mischievously enters in the day time, the enclosure, or goes upon the premises of another, with the intent to knock off, pick, destroy, or carry away, or having lawfully entered or gone upon does afterward wrongfully knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, shall be punished by a fine not

exceeding one hundred dollars and not less than five dollars, or by imprisonment in the county jail not exceeding thirty days.

Same in the night time.

(2526) § **17**. Every person who, shall maliciously or mischievously enter the enclosure, or go upon the premises of another in the night time, and knock off, pick, destroy, or carry away, any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, or having entered the enclosure or gone upon the premises of another, in the night time, with the intent to knock off, pick, destroy, or carry away any fruit or flowers, as aforesaid, be actually found thereon, shall, on conviction thereof, be punished by fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days.

Injuring fruit trees.

(2527) § **18**. Every person who, shall maliciously or mischievously, bruise, break or pull up, cut down, carry away, destroy, or in anywise injure any fruit or ornamental tree, shrub, vine, or material for hedge, being, growing, or standing on the land of another, shall be punished by fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days.

Removing or altering land marks.

(2528) § **19**. Every person is guilty of a misdemeanor who, either:

First. Maliciously removes any monuments of stone, wood, or other material, erected for the purpose of designating any point in the boundary of any lot or tract of land; or,

Second. Maliciously defaces or alters the marks upon any tree, post or other monument, made for the purpose of designating any point, course, or line in any such boundary; or,

Third. Maliciously cut down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks.

Interfering with piers or dams.

(2529) § **20.** Every person who, without authority of law, interferes with any pier, booms or dams, lawfully erected or maintained upon any waters within this Territory, or hoists any gate in or about said dams, is guilty of a misdemeanor.

Destroying dam

(2530) § **21**. Every person who maliciously destroys any dam or structure erected to create hydraulic power, or any embankment necessary for the support thereof, or maliciously makes, or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a misdemeanor.

Removing or injuring piles

(2531) § **22**. Every person who maliciously draws up or removes, or cuts or otherwise injures any piles fixed in the ground and used for securing any bank or dam of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, dock, quay, jetty or lock, is punishable by imprisonment in the Territorial prison not exceeding five years and not less than two, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Removing or masking signal light.

(2532) § **23**. Every person who unlawfully masks, alters or removes any light or signal, or wilfully exhibits any false light or signal, with intent to bring any locomotive or any railway car or train of cars into danger, is punishable by imprisonment in the

Territorial prison not exceeding ten years and not less than three years,

Injuring written instructions.

(2533) § **24.** Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument being the property of another, the false making of which would be forgery, is punishable in the same manner as the forgery of such instrument is made punishable.

Defacing election returns.

(2534) § **25.** Every messenger appointed by authority of law to receive and carry any report, certificate or certified copy of any statement relating to the result of any election, who wilfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law, and every person who takes away from such messenger any such report, certificate, or certified copy, with intent to prevent its delivery, or who wilfully does any injury or other act such as is above specified, is punishable by imprisonment in the Territorial prison not exceeding five years and not less than two years.

Opening and reading sealed letters.

(2535) § **26.** Every person who wilfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed, and every person who without like authority publishes any letter, knowing it to have been opened in violation of this section or any part thereof, is guilty of a misdemeanor.

Destroying telegraphic dispatches.

(2536) § **27.** Every person who discloses the contents of any telegraphic dispatch, or any part thereof addressed to another person, without the permission of such person, except upon the lawful order of a court or the judge thereof, to his loss, injury, or disgrace, is guilty of a misdemeanor.

Secreting telegraphic dispatches.

(2537) § **28.** Every person having in his possession any telegraphic dispatch addressed to another, maliciously secretes, conceals or suppresses the same, is guilty of a misdemeanor.

Injuring works of art or improvements

(2538) § **29.** Every person who wilfully injures, disfigures or destroys, not being the owner thereof, any monument, work of art, or useful or ornamental improvement, within the limits of any village, town or city, or any shade tree or ornamental plant, growing therein, whether situated upon private ground, or on any street, sidewalk or public park or place, is guilty of a misdemeanor.

Destroying works of literature or art.

(2539) § **30.** Every person who maliciously cuts, tears, disfigures, soils, obliterates, breaks or destroys any book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen or other work of literature or art, or object of curiosity deposited in any public library, gallery, museum, collection, fair or exhibition, is punishable by imprisonment in the Territorial prison for not exceeding three years, or in a county jail not exceeding one year.

Breaking gas or water pipes.

(2540) § **31.** Every person who wilfully breaks, digs up or obstructs, any pipe or main for conducting gas or water, any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is punishable by imprisonment in the Territorial prison not exceeding three years, or in a county jail not exceeding one year.

ACTICLE 57.—OFFENSES PERTAINING TO SALE OF INTOXICATING LIQUORS. Chap. 25.

SECTION.
1. Illegally granting license.
2 Selling liquor to Indians.
3. Public intoxication.
4. Selling liqūor to minors.
5. Selling liquor to paupers.
6. Selling liquor on Sunday.

(2541) § **1**. Every officer or other person whose duty it is made by law to grant license to sell intoxicating liquors, or any one who grants any such license contrary to the provisions of law, shall be deemed guilty of a misdemeanor. Illegally granting license.

(2542) § **2**. Every person who shall give, barter, sell, or in any mannar dispose of any intoxicating liquor to any Indian, shall be guilty of a misdemeanor. Selling liquor to Indian.

(2543) § **3**. Every person being found intoxicated in any public place, is punishable, upon conviction before a justice of the peace, by a fine of ten dollars. Public intxication.

(2544) § **4**. Every person found guilty of selling any intoxicating liquors, by agent or otherwise, to minors, unless upon the written order of their parents, guardians or family physicians, or to persons intoxicated, or who are in the habit of getting intoxicated, is punishable by a fine not exceeding one hundred and fifty dollars, and not less than twenty dollars for each offense. Selling liquors to minors.

(2545) § **5**. Every person who sells or gives to any person, knowing him to be a pauper, or inmate of any poor house or alms house, any strong or spirituous liquor, or wine, without authority from the superintendent or physician of such poor house or alms house, is punishable by a fine of twenty-five dollars. Selling liquors to paupers.

(2546) § **6**. Every innkeeper, or person licensed to sell liquors, who sells or gives away any strong or spirituous liquor, or wine, upon Sunday, is guilty of a misdemeanor. Selling liquor on Sunday.

ARTICLE 58.—MISCELLANEOUS CRIMES.

SECTION.
1 District Attorneys and their partners.
2 Prosecutors advising the defense.
3. Attorneys may defend themselves.
4. Intimidating laborers.
5. Intimidating employers.
6 Taking saw logs.
7 Receiving stolen logs.
8 Concealing estrays or lost goods.
9. Destroying or injuring domestic animals.
10. Hours of labor for women and children.
11. Removing or destroying mortgaged chattels.
12. Injurious acts not expressly forbidden.

(2547) § **1**. Every attorney who directly or indirectly advises in relation to, or aid or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by any person as district attorney or other public prosecutor, with whom such person is directly or indirectly connected as a partner, or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty District attorneys and their partners

of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his license to practice.

Prosecutors advising the defense.

(2548) § **2**. Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as district attorney or other public prosecutor, afterward, directly or indirectly, advises in relation to, or takes any part in the defense thereof, as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor he forfeits his license to practice.

Attorneys may defend themselves.

(2549) § **3**. The two last sections do not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

Intimidating laborers.

(2550) § **4**. Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent any hired foreman, journeyman, apprentice, workman, laborer, servant or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or induce such hired person to relinquish his work or employment, or to return any work he has in hand, before it is finished, is guilty of a misdemeanor.

Intimidating employers.

(2551) § **5**. Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants or other persons employed by him, or their rate of wages or time of service, is guilty of a misdemeanor.

Taking saw logs.

(2552) § **6**. Any person who shall wilfully and without authority take any saw logs that may be on any river or on the land adjoining or near a river, which may have floated down said river, or on to said land, and shall remove or attempt to remove the same, or who shall cut or split such logs or otherwise destroy or injure them, shall be deemed guilty of a misdemeanor, and upon conviction, where the value of the logs exceeds one hundred dollars, be punished by imprisonment in the county jail not more than one year nor less than three months, and by fine not to exceed one hundred and not less than ten dollars; and where the value of the logs is one hundred dollars or less, the punishment shall be by fine not exceeding eighty and not less than twenty dollars.

Receiving stolen logs.

(2553) § **7**. Any person who shall purchase, receive or secrete saw logs so taken or removed, or who shall cut or otherwise injure logs so taken or removed, knowing them to have been so taken or removed, shall be punished as prescribed in the preceding section.

Concealing estrays or lost goods

(2554) § **8**. Any person who shall attempt to conceal any estray, or any lost goods, found or taken up by him, or shall efface any marks or brands thereon, or carry the same beyond the

limits of the Territory, or knowingly permit the same to be done, or shall wilfully fail to cause the same to be advertised, sold or otherwise dealt with as provided by the statute on estray and lost goods, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding one hundred dollars, nor less than ten dollars, one-half to be paid to the informer and the other half into the county treasury.

Destroying or injuring domestic animals.

(2555) § **9.** If any person or persons shall wilfully and maliciously kill or destroy any neat cattle, horse, mule, ass or sheep of any age or value, the property of another or others, or shall wilfully or maliciously injure any such animal or animals, the property of another or others, he or they shall be punished by imprisonment in the Territorial prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars.

Hours of labor for woman or child.

(2556) § **10.** Every owner, stockholder, overseer, employer, clerk or foreman, of any manufactory, workshop, or other place used for mechanical or manufacturing purposes, who, having control, shall compel any woman or any child under eighteen years of age, or permit any child under fourteen years of age, to labor in any day exceeding ten hours, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by fine not exceeding one hundred and not less than ten dollars.

Removing or destroying mortgaged chattels.

(2557) § **11.** Every mortgagor of personal property, or his legal representatives, who, while his mortgage thereof remains in force and unsatisfied, wilfully destroys, removes, conceals, sells, or in any manner disposes of or materially injures the property or any part thereof, covered by such mortgage, without the written consent of the then holder of such mortgage, shall be deemed guilty of felony, and shall, upon conviction, be punished by imprisonment in the Territorial prison for a period not exceeding three years, or in the county jail not exceeding one year, and by fine not exceeding five hundred dollars.

Injurious acts not expressly forbidden.

(2558) § **12.** Every person who wilfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbes the public peace or health, or which openly outrages public decency, and is injurious to public morals, although no punishment is expressly prescribed therefor by this chapter, is guilty of a misdemeanor.

SECTION.
1. Acts punishable in different ways.
2. Acts punishable under foreign law.
3. Foreign conviction or acquittal.
4. Contempts punishable as crimes.
5. Mitigation of punishment.
6. Aiding in a misdemeanor.
7. Sending letter, when complete.
8. Failure to perform duty,
9. Attempts to commit crimes.
10. Failure to commit crimes, punishable how.
11. Restrictions of last two sections.
12. Second offenses, increased penalties.
13. Attempt to conceal death of child.
14. Other attempts; increased penalty for subsequent offenses.
15. Foreign conviction.
16. Two or more terms of imprisonment.
17. Imprisonment for life.
18. Sentence, how to be limited.
19. Juvenile offenders.
20. Fine added to imprisonment.
21. Civil rights suspended.
22. Civil death.
23. Person of convict protected.
24. Conviction does not work forfeiture.
25. Testimony; privilege of witnesses and perjury.

SECTION.
26. Definition of terms.
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29. Corruptly.
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42. Same; includes governments.
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44. Gender.
45. Present tense.
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47. Civil remedies not affected,
48. Proceedings to impeach or remove.
49. Military punishment.
50. Fines to go to county general fund.
51. Costs to be taxed against defendant.
52. Construction of "district attorney".

Acts punishable in different ways.

(2559) § **1.** An act or omission which is made punishable in different ways by different provisions of this article, or other penal statute, may be punished under either of such provisions, except that in cases specified in the twelfth and fifteenth sections of this article inclusive, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can it be punished under more than one; and an acquittal or conviction and sentence under either one, bars the prosecution for the same act or omission under any other.

Acts punishable under foreign laws.

(2560) § **2.** An act or omission declared punishable by this chapter, is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in this article.

Foreign conviction or acquittal.

(2561) § **3.** But whenever it appears upon the trial of an indictment that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of another state, government or country, founded upon the act or omission in respect to which he is upon trial, this is a sufficient defense.

Contempts punishable as crimes.

(2562) § **4.** A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

Mitigation of punishment.

(2563) § **5.** But where it is made to appear at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

Aiding in a misdemeanor.

(2564) § **6.** Whenever an act is declared a misdemeanor, and no punishment for counselling or aiding in the commission of such

act is expressly prescribed by law, every person who counsels or aids another in the commission of such act, is guilty of a misdemeanor.

Sending letter, when complete.

(2565) § **7.** In the various cases in which the sending of a letter is made criminal by this chapter, the offense is deemed complete from the time when such letter is deposited in any postoffice or any other place, or delivered to any person with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it shall be received by the person to whom it is addressed.

Failure to perform duty.

(2566) § **8.** No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

Attempts to commit crimes.

(2567) § **9.** No person can be convicted of an attempt to commit a crime when it appears that the crime intended or attempted was perpetrated by such person in pursuance of such attempt.

Failures to commit crimes punishable, how.

(2568) § **10.** Every person who attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempt, as follows:

First. If the offense so attempted be punishable by imprisonment in the Territorial prison for four years or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the Territorial prison, or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction for the offense so attempted.

Second. If the offense so attempted be punishable by imprisonment in the Territorial prison for any time less than four years, the person guilty of such attempt is punishable by imprisonment in a county jail for not more than one year.

Third. If the offense so attempted be punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

Fourth. If the offense so attempted be punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment, and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

Restriction.

(2569) § **11.** The last two sections do not protect a person who in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

Second offenses when first was five years or less, how punished.

(2570) § **12.** Every person who, having been convicted of any offense punishable by imprisonment in the Territorial prison, commits any crime after such conviction, is punishable therefor as follows:

First. If the offense of which such person is subsequently convicted is such that upon a first conviction an offender would be punishable by imprisonment in the Territorial prison for any term exceeding five years, such person is punishable by imprisonment in the Territorial prison for a term not less than ten years.

Second. If such subsequent offense is such that, upon a first conviction the offender would be punishable by imprisonment in the Territorial prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the Territorial prison for a term not exceeding ten years.

Third. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if committed, would be punishable by imprisonment in the Territorial prison, then the person convicted of such subsequent offense is punishable by imprisonment in the Territorial prison for a term not exceeding five years.

Attempt to conceal death of child.

(2571) § **13.** Every woman who, having been convicted of endeavoring to conceal the birth of an issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death of issue of her body, is punishable by imprisonment in the Territorial prison not exceeding five years and not less than two.

Second offenses when first punishable for more than five years or for petit larceny

(2572) § **14.** Every person who, having been convicted of petit larceny, or of an attempt to commit an offence which if perpetrated, would be punishable by imprisonment in the Territorial prison, commits any crime after such conviction, is punishable as follows:

First. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the Territorial prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life.

Second. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the Territorial prison for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed upon a conviction for such first offense.

Third. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense, which, if perpetrated, would be punishable by imprisonment in the Territorial prison, then such person is punishable by imprisonment in such prison for a term not exceeding five years.

Foreign conviction.

(2573) § **15.** Every person who has been convicted in any other state, government or country of an offense which, if committed within this Territory, would be punishable by the laws of this Territory by imprisonment in the Territorial prison, is punishable by any subsequent crime committed within this Territory, in the manner prescribed in the last three sections, and to the same extent as if such first conviction had taken place in a court of this Territory.

Two or more terms of imprisonment

(2574) § **16.** When any person is convicted of two or more

crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

Imprisonment for life.

(2575) § **17.** Whenever any person is declared punishable for a crime by imprisonment in the Territorial prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than such as are prescribed.

Sentence, how to be limited.

(2576) § **18.** In cases where convicts sentenced to be imprisoned in the Territorial prison for a longer period than one year, it is the duty of the court before which the conviction is had to limit the time of sentence, so that it will expire between the month of March and the month of November, unless the exact period of the sentence is fixed by law.

Juvenile offenders.

(2577) § **19.** Whenever any person under the age of sixteen years is convicted of an offiense punishable by imprisonment in the Territorial prison, the court before whom such conviction was had, may, in its discretion, sentence the person so convicted to imprisonment in the county jail of the county, or until there may be a reformatory, after which time [he] may be sentenced to the reformatory in which such conviction was had.

Fine may be added to imprisonment.

(2578) § **20.** Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars in addition to the imprisonment prescribed.

Civil rights suspended.

(2579) § **21.** A sentence of imprisonment in the Territorial prison for any term less than for life, suspends all the civil rights of the person so sentenced, and forfeits all public offices, and all private trusts, authority or power, during the term of such imprisonment.

Civil death.

(2580) § **22.** A person sentenced to imprisonment in the Territorial prison for life. is thereby deemed civilly dead.

Person of convict prohibited.

(2581) § **23.** The person of a convict sentenced to imprisonment in the Territorial prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

Conviction does not work forfeiture.

(2582) § **24.** No conviction of any person for crime works any forfeiture of any property, except in the cases of any outlawry for treason, and other cases in which a forfeiture is expressly imposed by law.

Testimony; privilege of witnesses and perjury.

(2583) § **25.** The various section of this chapter which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

Definition of terms.

(2584) § **26.** Wherever the terms mentioned in the following sections are employed in this chapter, they are deemed to be employed in the senses hereafter affixed to them, except where a different sense plainly appears.

Wilfully defined.

(2585) § **27.** The term "wilfully" when applied to the intent which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

Negligent; negligence.

(2586) § **28.** The terms "neglect," "negligence," "negligent" and "negligently," when so employed, import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

Corruptly.

(2587) § **29.** The term "corruptly" when so employed, imports a wrongful design to acquire some pecuniary or other advantage to the person guilty of the act or omission referred to.

Malice; maliciously.

(2588) § **30.** The terms "malice" and "maliciously," when so employed, import a wish to vex, annoy or injure another person, established either by proof or presumption of law,

Knowingly.

(2589) § **31.** The term "knowingly," when so applied, imports only a knowledge that the facts exist which bring the act or omission within the provisions of this chapter. It does not require any knowledge of the unlawfulness of such act or omission.

Bribe.

(2590) § **32.** The term "bribe" signifies any money, goods right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence unlawfully the person to whom it is given, in his action, vote or opinion, in any public or official capacity.

Vessel.

(2591) § **33.** The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, and steamships, canal boats, and every structure adapted to be navigated from place to place.

Peace officer.

(2592) § **34.** The term "peace officer" signifies any sheriff, coroner, constable, policeman, watchman of an incorporation, city or town, and such other officer or officers whose duty it is made to enforce and preserve the public peace.

Magistrate.

(2593) § **35.** The term "magistrate," signifies any justice of the peace, judge of probate court, mayor of an incorporated city or town, and such other officer or officers whose duty it is made by law to examine and punish violations of the public peace.

Signature.

(2594) § **36.** The term "signature" includes any name, mark or sign, written with the intent to authenticate any instrument or writing.

Writing includes printing.

(2595) § **37.** The term "writing" includes printing.

Real property.

(2596) § **38.** The term "real property" includes every estate, interest and right in lands, tenements and hereditaments.

Personal property

(2597) § **39.** The term "personal property" includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments by which any pecuniary obligation, right or title to property, real or personal, is created or

acknowledged, transferred, increased, defeated, discharged or diminished.

Property defined.

(2598) § **40.** The term "property" includes both real and personal property.

Person defined.

(2599) § **41.** The word "person" includes corporations, as well as natural persons.

Same.

(2600) § **42.** Where the term "person" is used in this chapter to designate the party whose property may be the subject of any offense, it includes this Territory, any other state, government or country which may lawfully own any property within this Territory, and all public and private corporations or joint associations, as well as individuals.

Singular includes plural.

(2601) § **43.** The singular number includes the plural, and the plural the singular.

Gender.

(2602) § **44.** Words used in the masculine gender, comprehend as well the feminine and neuter.

Present tense

(2603) § **45.** Words used in the present tense include the future, but exclude the past.

Intent to defraud.

(2604) § **46.** Whenever, by any of the provisions of this chapter an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate whatever.

Civil remedies not affected.

(2605) § **47.** The omission to specify or affirm in this chapter, any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not effect any right to recover or enforce the same.

Proceeding to impeach or remove.

(2606) § **48.** The omission to specify or affirm in thisc hapter any ground or forfeiture of a public office or other trust or special authority conferred by law, to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

Military punishment.

(2607) § **49.** This chapter does not affect any power conferred by law upon any court martial or other military authority or officer to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt; nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians and vagrants.

Fines to go to county general fund.

(2608) § **50.** All fines, forfeitures and pecuniary penalties, prescribed as a punishment, by any of the provisions of this chapter when collected, shall be paid into the treasury of the proper county, to be added to the county general fund.

Cost taxed against defendant.

(2609) § **51.** In all cases of conviction, the costs of the prosecution shall be taxed against the defendant, and enforced as other judgments in criminal causes.

Construction of "district attorney."

(2610) § **52.** The words "district attorney," as used in this chapter shall be construed to include and mean the same as the

words "county attorney," prosecuting attorney or any other attorney authorized to appear for and in behalf of the Territory.

CHAPTER XXVI.—DAMAGES.

ARTICLE.
1. Damages in general.
2. Measure of damages.

ARTICLE 1.—DAMAGES IN GENERAL.

SECTION.
1. Species of relief.
2. Relief from forfeiture.
3. Damages from any injury.
4. Detriment defined.
5. Future detriment.
6. Interest upon damages.
7. Jury may allow without damages.
8. Waiver of interest.
9. Jury may give exemplary damages, when.

Species of relief.

(2611) § **1.** As a general rule, compensation is the relief or remedy provided by the law of this Territory for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the civil law.

Relief from forfeiture.

(2612) § **2.** Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, wilful or fraudulent breach of duty.

Damages for any injury.

(2613) § **3.** Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.

Detriment defined.

(2614) § **4.** Detriment is a loss or harm suffered in person or property.

Future detriment.

(2615) § **5.** Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof, or certain to result in the future.

Interest upon damages

(2616) § **6.** Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt.

Jury may allow without damages.

(2617) § **7.** In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud or malice, interest may be given in the discretion of the jury.

Waiver of interest.

(2618) § **8.** Accepting payment of the whole principal, as such, waives all claim to interest.

Jury may give exemplary damages, when.

(2619) § **9.** In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

Damages for Breach of Contract.

SECTION.
1. Proximate results determine measure; damages must be ascertainable.
2. Principal and interest.
3. Foreign bills.
4. For breach of covenant in grants.
5. For breach of covenant against incumbrances.
6. For breach of agreement to convey.
7. For breach of agreement to buy.
8 For breach of agreement to deliver personalty.
9 Same; when wrongful conversion.
10. Breach of agreement to accept and pay.
11. Same; when title is not vested in buyer.
12. Breach of warranty of title.
13. Breach of warranty of quality.
14. Breach of warranty of fitness.
15. Breach of carrier's obligation to accept.
16. Breach of carrier's obligation to deliver.
17. Detriment caused by carrier's delay.
18. Breach of warranty of authority.
19. Breach of promise to marry.

Damages for Wrongs.

SECTION.
20. Obligation not arising from contract; measure of damages.
21. Wrongful occupation.
22. Detainer by trustee.
23. Conversion of personalty.
24. Presumption cannot be repelled.
25. Damages to one have lien on personal property.
26. For seduction.
27. Exemplary damages for injury to animals.

Penal Damages.

SECTION.
28 Double rent as damages.
29. Wilful holding over real property.
30. Forcible exclusion from real property.
31. Wrongful injury to timber.

General Provisions.

SECTION.
32. Value of property as to the seller.
33. Value as to the buyer.
34 Peculiar value.
35. Value of title papers.
36. Exclusion of exemplary damages.
37. Limitation of amount.
38. Damages must be reasonable.
39. Nominal damages.

(2620) § **1.** For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom. No damages can be recovered for a breach of contract, which are not clearly ascertainable in both their nature and origin. Proximate results determine measure, damages must be certain.

(2621) § **2.** The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon. Principal and interest.

(2622) § **3.** For the dishonor of foreign bills of exchange the damages are prescribed by sections 4560 and 4561 of the Dakota code as follows: Foreign bills.

[SECTION 4560. Damages are allowed under ths last section upon bills drawn upon any person:

First. If drawn upon any person in this Territory, two dollars upon each one hundred dollars of the principal sum specified in the bill.

Second. If drawn upon any person out of this Territory, but in the states of Nebraska, Iowa, Minnesota, Wisconsin, Illinois and Missouri, or in the Territory of Montana, three dollars upon each hundred dollars of the principal sum specified in the bill.

Third. If drawn upon any person in any of the United States or territories other than those above named, five dollars upon each hundred dollars of the principal sum specified in the bill.

Fourth. If drawn upon any person in any place in a foreign country, ten dollars upon each hundred dollars of the principal sum specified in the bill.

And from the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned as above.

SECTION 4561. If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange. If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.—Dakota code.]

For breach of covenants in grants.

(2623). § **4.** The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty, or of quiet enjoyment, in a grant of an estate in real property, is deemed to be:

First. The price paid to the grantor, or if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore, at the time of the grant, to the value of the whole property.

Second. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six years; and,

Third. Any expenses properly incurred by the covenantee in defending his possession.

For breach of covenants against incumbrances

(2624) § **5.** The detriment caused by the breach of a covenant against incumbrances in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishment either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value, at the time of the grant, of the property affected by the breach, as compared with the whole; or, in the latter case interest on a like amount.

For breach of agreement to convey.

(2625) § **6.** The detriment caused by the breach of an agreement to convey an estate in real property, is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid, and the value of the estate

agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

For breach of agreement to buy.

(2626) § **7.** The detriment caused by the breach of an agreement to purchase an estate in real property, is deemed to be the excess if any, of the amount which would have been due to the seller under the contract, over the value of the property to him.

For breach of agreement to deliver personalty.

(2627) § **8.** The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

Same; when wrongful conversion.

(2628) § **9.** The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of a wrongful conversion.

Breach of agreement to accept and pay.

(2629) § **10.** The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is verted in him, is deemed to be the contract price.

Same; when title not vested in buyer.

(2630) § **11.** The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be:

First. If the property has been resold, pursuant to section 4439, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

Second. If the property has not been resold in the manner prescribed by section 4439, the excess, if any, of the amount due from the buyer, under the contract over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

[SECTION 4439. One who sells personal property has a special lien thereon, dependent on possession for its price, if it is in his possession when the price becomes payable; and may enforce his lien in like manner as if the property was pledged to him for the price.—Dakota Code.]

For breach of warranty to title.

(2631) § **12.** The detriment caused by the breach of a warranty of the title of personal property sold, is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay, in an action brought for the property by the true owner.

For breach of warranty of quality.

(2632) § **13.** The detriment caused by the breach of a warranty of the quality of personal property, is deemed to be the excess, if any, of the value which the property would have had, at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

For breach of warranty of fitness

(2633) § **14.** The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose, is deemed to be that which is defined in the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

For breach of carrier's obligation to accept.

(2634) § **15.** The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage, and the amount it would be necessary to pay for the same service when it ought to be performed.

For breach of carrier's obligation to deliver.

(2635) § **16.** The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to its own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

For detriment caused by carrier s delay.

(2636) § **17.** The detriment caused by a carrier's delay in the delivery of freight, is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery.

For breach of warranty of agent's authority.

(2637) § **18.** The detriment caused by the breach of a warranty of an agent's authority, is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

For breach of promise to marry.

(2638) § **19.** The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

When obligation does not arise from contract, measure of damages, what.

(2639) § **20.** For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate for all the detiment proximately caused thereby, whether it could have been anticipated or not.

Caused by wrongful occupation.

(2640) § **21.** The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 2641, 2647, 2648, and 2649, is deemed to be the value of the use of the property for the time of such occupation, not exceeding six years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

For detainer by trustee.

(2641) § **22.** For wilfully holding over real property by a person who entered upon the same as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

Conversion of personalty.

(2642) § **23.** The detriment caused by the wrongful conversion of personal property is presumed to be:

First. The value of the property at the time of the conversion, with the interest from that time; or,

Second. Where the action has been prosecuted with reasonable diligence, the highest market value of the property at any

time between the conversion and the verdict, without interest, at the option of the injured party; and,

Third. A fair compensation for the time and money properly expended in pursuit of the property.

Presumption cannot be repelled.

(2643) § **24**. The presumption declared by the last section cannot be repelled in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

Damages to one having lien on personal property.

(2644) § **25**. One having a mere lien on personal property, cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 2642 for loss of time and expenses.

For seduction.

(2645) § **26**. The damages for seduction rest in the sound discretion of the jury.

Exemplary damages for injuries to animals.

(2646) § **27**. For wrongful injuries to animals, being subjects of property, committed wilfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

Double rent as damages.

(2647) § **28**. For the failure of a tenant to give up the premises held by him, when he has given notice of his intention to do so, the measure of damages is double the rent which he ought otherwise to pay.

For wilful holding over real property

(2648) § **29**. For wilfully holding over real property, by a tenant after the end of his term, and after notice to quit has been duly given, and demand of possession made, the measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby.

For forcible exclusion from real property.

(2649) § **30**. For forcibly ejecting or excluding a person from the possession of real property, the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of.

For wrongful injuries to timber.

(2650) § **31**. For wrongful injuries to timber, trees or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the the wood was taken by the authority of highway officers for the purposes of a highway in which case the damages are a sum equal to the actual detriment.

Value of property as to the seller.

(2651) § **32**. In estimating damages, the value of property, to a seller thereof, is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

Value as to buyer or owner.

(2652) § **33**. In estimating damages, except as provided by sections 2653 and 2654, the value of property to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing, in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty

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upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

Peculiar value.

(2653) § **34**. Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a wilful wrong-doer.

Value of title papers.

(2654) § **35**. For the purpose of estimating damages the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

Exclusive of exemplary damages.

(2655) § **36**. The damages prescribed by this article are exclusive of exemplary damages and interest, except where those are expressly mentioned.

Limitation of amount of damages.

(2656) § **37**. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in sections 2638, 2645 and 2646.

Damage must be reasonable.

(2657) § **38**. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

Nominal damages.

(2658) § **39**. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

CHAPTER XXVII.—DEBTOR AND CREDITOR.

SECTION.
1. Debtor defined.
2. Creditor defined.
3. Fraud invalidates contracts of debtors.
4. Creditors may be preferred.
5. Alternative rights to several funds.
6. Transfer with intent to defraud creditors.
7. Transfer of personal property without change of possession.
8. Fraud avoided, how.
9. Question of fraudulent intent is one of fact.

Debtor defined.

(2659) § **1**. A debtor, within the meaning of this chapter, is one who, by reason of an existing obligation, is, or may become, liable to pay money to another, whether such liability is certain or contingent.

Creditor defined.

(2660) § **2**. A creditor, within the meaning of this chapter, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

Fraud only invalidates contracts of debtor.

(2661) § **3**. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

Creditors may be preferred.

(2662) § **4**. A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand, in preference to another.

Alternative right to several funds.

(2663) § **5**. Where a creditor is entitled to resort to each of

several funds for the satisfaction of his claim, and another person has an interest in or is entitled as a creditor to resort to some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

Transfers with intent to defraud creditors are void.

(2664) § **6**. Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any persons upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Transfer of personal property without change of possession is deemed fraudulent.

(2665) § **7**. Every transfer of personal property other than a thing in action, or a ship or cargo at sea, or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia is conclusively presumed, if made by a person having at the time the posession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be frauduleut and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any person on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

Fraud avoided, how.

(2666) § **8**. A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

Question of fraudulent interest is one of fact.

(2667) § **9**. In all cases arising under section 3298, or under the provisions of this chapter, except as otherwise provided in section 2655, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

[SECTION 3298. Every instrument other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value of the same property, or the rents or profits thereof.—Dakota code.]

CHAPTER XXVIII.—DENTISTRY.

AN ACT to regulate the practice of dentistry within the Territory of Oklahoma.

[Took effect December 25, 1890.]

SECTION.
1. Unlawful to practice without license.
2. Board of dental examiners created.
3. Same, organization, meetings and duties.
4. Former practitioner to register and receive license.
5. New practitioner, diploma or examination.
6. Fees allowed for issuing licenses.
7. Examiners allowed compensation.
8. Violation of this act.

Be it enacted by the Legislative Assembly, of the Territory of Oklahoma:

Unlawful to practice without license.

(2668) § **1**. That it shall be unlawful for any person to practice or attempt to practice dentistry or dental surgery in the Territory of Oklahoma without having first received a license from the board of dental examiners, as hereinafter provided.

Board of dental examiners created.

(2669) § **2**. A board of dental examiners is hereby created whose duty it shall be to carry out the purpose and enforce the provisions of this act. The members of such board shall be appointed by the Governor, and shall consist of five practicing dentists, residents of Oklahoma Territory, who shall have been engaged in the continuous practice of dentistry or dental surgery for at least two years prior to the passage of this act. In case of a vacancy occuring in said board such vacancy shall be filled by the Governor.

Same, organization, meetings and duties.

(2670) § **3**. Said board shall keep a record, in which shall be registered the names and residence and place of business of all persons authorized under this act to practice dentistry, or dental surgery in this Territory. It shall elect one of its members as president, one as secretary, and one as treasurer thereof, which election shall hold during the term for which the incumbent was appointed or during his or her residence in the Territory. It shall meet at least once in each year, and as much oftener and at such times and places as it may deem necessary. A majority of such board shall at all times constitute a quorum, and the proceedings thereof shall at all reasonable times be open for public inspection.

Former practitioners to register and receive license.

(2671) § **4**. Every person who holds a diploma from a recognized college of denistry, or who was engaged in the practice of dental surgery in the Territory, three months previous to the passage of this act and who has been regularly engaged in the practice of dentistry for three years next preceding the passage of this act, shall within six months thereafter cause his or her name, residence and place of business to be registered with the board of dental examiners and pay the fee hereinafter provided, whereupon the board shall issue a license duly signed by a majority of said board, and such license shall be *prima facie* evidence of the right of the holder thereof to practice dentistry or dental surgery in the Territory of Oklahoma.

(2672) § **5.** Any person desiring to commence the practice of dentistry or dental surgery in the Territory of Oklahoma after the passage of this act, shall before commencing such practice, file for record in a book kept for that purpose, with said board of dental examiners, his or her diploma or a duly authenticated copy thereof and pay the fee as hereinafter provided, whereupon the said board shall issue to such person a license, the same as provided in section four of this act: *Provided, however*, That any person who shall pass a satisfactory examination before the said board regarding his or her qualifications to practice dentistry or dental surgery, and pay the fee as hereinafter provided, shall also be granted a license as provided in section four of this act.

New practitioner, diploma or examination.

(2673) § **6.** To provide for the proper and effective enforcement of this act, said board of dental examiners shall be entitled to the following fees, to-wit: For each license issued to persons engaged in the practice of dentistry or dental surgery in this Territory three months previous to the passage of this act, the sum of three dollars, for each license issued to persons not engaged in such practice three months previous to such passage, the sum of ten dollars.

Fees allowed for issuing licenses.

(2674) § **7.** The members of said board shall each receive the compensation of three dollars per day for each and every day actually engaged in the duties of their office, which together with all other legitimate expenses incurred in the performance of such duties, shall be paid from fees received by the board under the provisions of this act, and no parts of the expenses of said board shall at any time be paid out of the Territorial treasury. All moneys in excess of said per diem allowances and other expenses shall be held by the treasurer of said board as a special fund for meeting the expenses of said board, he giving such bond as the board shall from time to time direct, and such board shall make an annual report of its proceedings to the Governor by the fifteenth day of December of each year, together with an account of all moneys received and disbursed by them in pursuance of this act.

Examiners allowed compensation.

(2675) § **8.** Any person who shall violate this act by practicing or attempting to practice dentistry or dental surgery in this Territory without first complying with the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than twenty-five dollars, nor more than two hundred dollars, or by confinement in the county jail for not more than six month, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That nothing in this act shall be so construed as to prevent physicians and surgeons or other persons from extracting teeth, and all fines collected under this act shall belong to the common school fund of the county where the offense was committed.

Violation of this act.

This act shall take effect and be in force from and after the final adjournment of this Legislative Assembly.

CHAPTER XXIX.—DEFINITIONS AND MAXIMS.

ARTICLE.
1. Definition, division and maxims.
2 Definitions and provisions.

ARTICLE 1.—DEFINITIONS, DIVISIONS AND MAXIMS.

SECTION.
1. Title of act.
2. Origin of law.
3. Law is expressed, how.
4. Common law divided.
5. Evidence of common law.
6. Excludes common law.
7. What are civil rights.
8. Rights waived, how.
9. Divisions of the civil law.
10. Maxims of jurisprudence.

Title of act.

(2676) § **1.** This act shall be known as [a portion of] the civil law of the Territory of Oklahoma.

Origin of law.

(2677) § **2.** Law is a rule of property and of conduct prescribed by the sovereign power.

Law is expressed, how.

(2678) § **3.** The will of the sovereign power is expressed:

First. By the Organic Act passed by Congress, creating a temporary government for this Territory, and vesting the legislative power in the Governor and a Legislative Assembly, and extending it to all rightful subjects of legislation consistent with the constitution of the United States and that act.

Second. By other statutes enacted by Congress, or by the Legislative Assembly.

Third. By the ordinances of other and subordinate legislative bodies.

Common law divided.

(2679) § **4.** The common law is divided into:

First. Public law, or the law of nations.

Second. Domestic or municipal law.

Evidence of same.

(2680) § **5.** The evidence of the common law is found in the decisions of the tribunals.

Statutes exclude common law.

(2681) § **6.** In this Territory there is no common law in any case where the law is declared by the statute.

Civil rights are what.

(2682) § **7.** All original civil rights are either:

First. Rights of person; or,

Second. Rights of property.

Rights how waived.

(2683) § **8.** Rights of property and of person may be waived, surrendered, or lost by neglect, in the cases provided by law.

Divisions of the civil law.

(2684) § **9.** Under civil law there are four general divisions:

First. The first relates to persons.

Second. The second to property.

Third. The third to obligations.

Fourth. The fourth contains general provisions relating to persons, property and obligations.

Maxims of jurisprudence.

(2685) § **10.** The maxims of jurisprudence hereinafter set forth, are intended not to qualify any of the foregoing provisions of law, but to aid in their just application.

First. When the reason of a rule ceases, so should the rule itself.

Second. Where the reason is the same, the rule should be the same.

Third. One must not change his purpose to the injury of another.

Fourth. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

Fifth. One must so use his own rights as not to infringe upon the rights of another.

Sixth. He who consents to an act is not wronged by it.

Seventh. Acquiescence in error takes away the right of objecting to it.

Eighth. No one can take advantage of his own wrong.

Ninth. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

Tenth. He who can and does not forbid that which is done on his behalf, is deemed to have bidden it.

Eleventh. No one should suffer by the act of another.

Twelfth. He who takes the benefit must bear the burden.

Thirteenth. One who grants a thing is presumed to grant also whatever is essential to its use.

Fourtheenth. For every wrong there is a remedy.

Fifteenth. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

Sixteenth. Between rights otherwise equal, the earliest is preferred.

Seventeenth. No man is responsible for that which no man can control.

Eighteenth. The law helps the vigilant before those who sleep ontheir rights.

Nineteenth. The law respects form less than substance.

Twentieth. That which ought to have been done is to be regarded as done in favor of him to whom, and against him from whom, performance is due.

Twenty-first. That which does not appear to exist is to be regarded as if it did not exist.

Twenty-second. The law never requires impossibilities.

Twenty-third. The law neither does nor requires idle acts.

Twenty-fourth. The law disregards trifles.

Twenty-fifth. Particular expressions qualify those which are general.

Twenty-sixth. Contemporaneous exposition is in general the best.

Twenty-seventh. The greater contains the less.

Twenty-eighth. Superfluity does not vitiate.

Twenty-ninth. That is certain which can be made certain.

Thirtieth. Time does not confirm a void act.

Thirty-first. The incident follows the principal, not the principal the incident.

Thirty-second. An interpretation which gives effect is preferred to one which makes void.

Thirty-third. Interpretation must be reasonable.

Thirty-fourth. Where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer.

ARTICLE 2.—DEFINITIONS AND PROVISIONS.

SECTION.
1. Meaning of words.
2. Statutory meaning.
3. Degrees of care.
4. Degrees of care defined.
5. Degrees of negligence.
6. Degrees of negligence defined.
7. Children.
8. Debtor and creditor.
9. Good faith.
10. Notice classed.
11. Actual notice.
12. Constructive notice.
13. Presumption of constructive notic
14. False notice.
15. Paper.
16. Person includes corporation.
17. Several.
18. Third person.
19. Holidays.
20. Additional day.
21. Business day.
22. Next business day.
23 Usage.
24. Customary.
25. Value.
26. Verdict.
27. Fine.
28. Gender.
29. Number.
30. Other definitions.
31. Interest.
32. Writing and printing.
33. Statutes excludes common law.
34. Impression of seal.
35. Majority power.
36. Repeal does not revive.
37. Effect of repeal.

Meaning of words.

(2686) § **1.** Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears, and except also that the words hereinafter explained are to be understood as thus explained.

Statutory meaning

(2687) § **2.** Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurrs, except where a contrary intention plainly appears.

Degrees of care.

(2688) § **3.** There are three degrees of care and of diligence mentioned in this statute, namely, slight, ordinary and great. The latter include the former.

Degrees of care defined.

(2689) § **4.** Slight care or diligence is such as persons of ordinary prudence usually exercise about their own affairs of slight importance; ordinary care or diligence is such as they usually exercise about their own affairs of ordinary importance; and great care or diligence is such as they usually exercise about their own affairs of great importance.

Degrees of negligence.

(2690) § **5.** There are three degrees of negligence, namely, slight, ordinary, and gross. The latter includes the former.

Degrees of negligence defined.

(2691) § **6.** Slight negligence consists in the want of great care and diligence; ordinary negligence in the want of ordinary care and diligence; and gross negligence in the want of slight care and diligence.

Children.

(2692) § **7.** The term children includes children by birth and by adoption.

Debtor and creditor.

(2693) § **8.** Except as defined and used in sections 2659 and 2660, every one who owes to another the performance of an obligation is called a debtor, and the one to whom he owes it, is called a creditor.

Good faith

(2694) § **9.** Good faith consists in an honest intention to ab-

stain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious.

Notice classes.

(2695) § **10.** Notice is either actual or constructive.

Actual notice.

(2696) § **11.** Actual notice consists in express information of a fact.

Constructive notice.

(2697) § **12.** Constructive notice is notice imputed by the law to a person not having actual notice.

Presumption of constructive notice.

(2698) § **13.** Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.

False notice.

(2699) § **14.** A notice which is false when given is not valid by the subsequent happening of the event.

Paper.

(2700) § **15.** The word "paper," means any flexible material upon which it is usual to write.

Person includes corporation.

(2601) § **16.** The word "person," except when used by way of contrast, includes not only human beings, but bodies politic or corporate.

Several.

(2702) § **17.** The word "several," in relation to number, means two or more.

Third persons.

(2703) § **18.** The words "third person" include all who are not parties to the obligation or transaction concerning which the phrase is used.

Holidays.

(2704) § **19.** Holidays are, every Sunday, the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, the thirtieth day of May, every day on which an election is held throughout the Territory, and every day appointed by the President of the United States, or by the Governor of this Territory, for a public fast, thanksgiving, or holiday.

Additional day

(2795) § **20.** If the first day of January, the twenty-second day of February, the fourth day of July, or the twenty-fifth of December, falls upon a Sunday, the Monday following is a holiday.

Business days.

(2706) § **21.** All other days than those mentioned in the last two sections, are to be deemed business days, for all purposes.

Next business day.

(2707) § **22.** Whenever any act of a secular nature, other than a work of necessity, or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

Usage.

(2708) § **23.** Usage is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties, or so well established, general and uniform, that they must be presumed to have acted with reference thereto.

Customary.

(2709) § **24.** The words "usual," and "customary," mean "according to usage."

Value.

(2710) § **25.** A valuable consideration is a thing of value parted with, or a new obligation assumed, at the time of obtaining a thing, which is a substantial compensation for that which is obtained thereby. It is also called simply "value."

Verdict.

(2711) § **26.** The word "verdict" includes not only the verdict of a jury, but also the finding upon the facts, of a judge, or of a referee appointed to determine the issues in a cause.

Time.

(2712) § **27.** The word "year" means a calendar year, and "month," a calendar month. Fractions of a year are to be computed by the number of months, thus: half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day, and involve no question of priority.

Gender.

(2713) § **28.** Words used in the masculine gender include the feminine and neuter.

Number.

(2714) § **29.** Words used in the singular number include the plural, and the plural the singular, except where a contrary intention plainly appears.

Other definitions

(2715) § **30.** Words used in the present tense include future as well as the present; the word "oath" includes "affirmation;" and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" "signature" or "subscription" includes mark, when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have the signification attached to them in this section unless otherwise apparent from the context:

First. The word "property" includes property, real and personal.

Second. The words "real property" are co-extensive with lands, tenements and hereditaments.

Third. The words "personal property" include money, goods, chattels, things in action and evidences of debt.

Fourth. The word "will" includes codicils.

Interest.

(2716 § **31.** The words "compound interest" mean interest added to the principal as the former becomes due, and thereafter made to bear interest.

Writing and printing.

(2717) § **32.** The words "writing" and "written" include "printing" and "printed," except in the case of signatures, and where the words are used by way of contrast to printing. Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made with ink it must be so made.

Statute excludes common law.

(2718) § **33.** The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this statute which establishes the law of this Territory respecting the subjects to which it relates; and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

Impression of seal.

(2719) § **34.** When the seal of a court, public officer or person is required by law to be affixed to any process, commission, paper or instrument, the word "seal" includes an impression of such

seal upon the paper alone, as well as upon wax, or a waifer affixed thereto. Chap. 30.

Majority power.

(2720) § **35**. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

Repeal does not revive.

(2721) § **36**. Whenever any act of the Legislative Assembly is repealed, which repealed a former act, such former act shall not thereby be revived, unless if shall be expressly so provided.

[See section 12 revised statutes United States.]

Effect of repeal.

(2722) § **37**. The repeal of any statute by the Legislative Assembly shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.

[See section 13, revised statutes of United States]

CHAPTER XXX.—DEPOSITS.

ARTICLE.
1. Deposit in general.
2. Deposit for keeping and exchange.
3. Deposit in form of a loan.

ARTICLE 1.—DEPOSIT IN GENERAL.

Nature and Creation of Deposit.

SECTION.
1. Classes of deposit.
2. Voluntary deposit.
3. Involuntary deposit.
4. Must take charge.
5. Deposit for keeping.
6. Deposit for exchange.

Obligations of the Depositary.

SECTION.
7. Delivery on demand.
8 Demand necessary.
9 Place of delivery.
10. Notice to owner of adverse claim.
11. Notice of wrongful detention.
12. Delivery to disagreeing owners.

Classes of deposit.

(2723) § **1**. A deposit may be voluntary or involuntary; and for safe-keeping or for exchange.

Voluntary deposit.

(2724) § **2**. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party, the person giving is called the despositor and the person receiving the depositary.

Involuntary deposit

(2725) § **3**. An involuntary deposit is made:

First. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

Second. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal

property committing it, out of necessity, to the care of any person.

Must take charge.

(2726) § **4.** The person with whom a thing is deposited, in the manner described in the last section, is bound to take charge of it if able to do so.

Deposit for keeping.

(2727) § **5.** A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

Deposit for exchange.

(2728) § **6.** A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

Delivery on demand.

(2729) § **7.** A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law and has given the notice required by section 2732.

Demand necessary.

(2730) § **8.** A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specifed time.

Place of delivery.

(2731) § **9.** A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

Notice to owner of adverse claim.

(2732) § **10.** A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited which may tend to excuse the depositary from delivering the thing to him.

Notice of wrongful detention.

(2733) § **11.** A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if, within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

Delivery to disagreeing owners.

(2734) § **12.** If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

ARTICLE 2.—DEPOSIT FOR KEEPING AND EXCHANGE. Chap. 30.

General Provisions.

SECTION.
1. Indemnity for damages.
2. Care of animals.
3. Use of deposit.
4. Damages for wrongful use.
5. Sale of perishable things.
6. Presumed negligence.
7. Services by depositary.
8. Measure of damages.

Gratuitous Deposit.

SECTION.
9. Gratuitous deposit.
10. Involuntary deposit.
11. Slight care used.
12. When duties cease.

Storage.

SECTION.
13. Depositary for hire.
14. Ordinary care.
15. Rate of compensation.
16. Termination of deposit.
17. Same; full time paid.

Inn-keeper.

SECTION.
18. Liability of Inn-keeper.
19. How exempted from liability.

Finding.

SECTION.
20. Finder depositary, when.
21. Must notify owner.
22. Claimant must prove.
23. Reward for services.
24. Exoneration by storage.
25. Finder may sell.
26. Manner of sale.
27. Surrender of thing.
28. Intentionally abendoned.

Deposit for Exchange.

SECTION.
29. Transfer of title of deposit for exchange.

(2735) § **1.** A depositor must indemnify the depositary: Depositary must be indemnified for damages.

First. For all damage caused to him by the defects or vices of the thing deposited; and,

Second. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

(2736) § **2.** A depositary of living animals must provide them with suitable food and shelter, and treat them kindly. Care of animals.

(2737) § **3.** A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the pepositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity. Use of deposit forbidden

(2738) § **4.** A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof, unless such Damages for wrongful use.

Chap. 30.

damage must inevitably have happened, though the property had not been thus used.

Sale of perishing thing.

(2739) § **5.** If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

Presumed negligence for injury.

(2740) § **6.** If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or wilfully misrepresents the circumstances to him, the depositary is presumed to have wilfully, or by gross negligence, permitted the loss or injury to occur.

Services by depositary.

(2741) § **7.** So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the law on employment and service.

Measure of damages.

(2742) § **8.** The liabilities of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

Gratuitous deposit.

(2743) § **9.** Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

Involuntary deposit

(2744) § **10.** An involuntary deposit is gratuitous, the depositary being entitled to no reward.

Slight care must be used.

(2745) § **11.** A gratuitous depositary must use at least slight care for the preservation of the thing deposited.

When duties cease.

(2746) § **12.** The duties of a gratuitous depositary cease:

First. Upon his restoring the thing deposited to its owner; or,

Second. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision 2 of section 2725, cannot give such notice until the emergency that gave rise to the deposit is past.

Depositary for hire.

(2747) § **13.** A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

Ordinary care.

(2748) § **14.** A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

Rate of compensation.

(2749) § **15.** In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

Termination of deposit.

(2750) § **16.** In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

Same, full time paid.

(2751) § **17.** Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

Liability of keeper of an inn or boarding house.

(2752) § **18.** An inn-keeper or keeper of a boarding house is liable for all losses of, or injuries to, personal property placed by

his guests or boarders under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one whom he brought into the inn or boarding house, and upon such property the inn-keeper or keeper of a boarding house has a lien and a right of detention for the payment of such amount as may be due him for lodging, fare, boarding, or other necessaries by such guest or boarder; and the said lien may be enforced by a sale of the property in the manner prescribed for the sale of pledged property.

How exempted from liability.

(2753) § **19.** If any inn-keeper or boarding house keeper keeps a fire-proof safe, and gives notice to a guest or boarder either personally or by putting up a printed notice in a prominent place in the room occupied by the guest or boarder, that he keeps such a safe, and will not be liable for money, jewelry, documents or other artices of unusual value and small compass, unless placed therein, he is not liable except so far as his own acts contrbute thereto, for any loss of, or injury to, such article, if not deposited with him, and not required by the guest or boarder for present use.

Finder a depositary, when.

(2754) § **20.** One who finds a thing lost is not bound to take charge of it; but if he does so, he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

Must notify owner.

(2755) § **21.** If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

Claimant must prove.

(2756) § **22.** The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

Reward for service

(2757) § **23.** The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

Exoneration from liability by storage.

(2758) § **24.** The finder of a thing may exonerate himself from liability at any time, by placing it on storage with any responsible person of good character, at a reasonable expense.

Finder may sell, when.

(2759) § **25.** The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found; or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases:

First. When the thing is in danger of perishing, or losing the greater part of its value; or,

Second. When the lawful charges of the finder amount to two-thirds of its value.

Manner of sale.

(2760) § **26.** A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

Surrender of thing to finder.

(2761) § **27.** The owner of a thing found may exonerate

himself from the claims of the finder by surrendering it to him in satisfaction thereof.

Intentionally abandoned

(2762) § **28.** The provisions of this article have no application to things which have been intentionally abandoned by their owners.

Transfer of title of deposit for exchange.

(2763) § **29.** A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

ARTICLE 3.—DEPOSIT IN FORM OF A LOAN.

Loan for Use.

SECTION.
1. Loan for use defined.
2. Title and increase belong to lender.
3. Care by borrower.
4. Borrower of living animal.
5. Degree of skill.
6. Repair of injuries.
7. Uses limited.
8. Relending forbidden.
9. Expenses during loan.
10. Lender liable for defects.
11. Lender may require return.
12. Returnable without demand; place of return.

Loan for Exchange.

SECTION.
13. Loan for exchange defined.
14. Same, how applied.
15. Title in borrower.
16. Lender cannot modify contract.
17. Sections applicable.

Loan for use defined.

(2764) § **1.** A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time without reward for its use.

Title and increase belong to lender.

(2765) § **2.** A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

Care by borrower.

(2766) § **3.** A borrower for use must use great care for the preservation in safety in good condition of the thing lent.

Borrower of living animal.

(2767) § **4.** One who borrows a living animal for use must treat it with great kindness, and provide everything necessary and suitable for it.

Degree of skill.

(2768) § **5.** A borrower for use is bound to have and to exercise such skill in the care of the thing lent, as he causes the lender to believe him to possess.

Repair of injuries.

(2769) § **6.** A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight.

Uses limited.

(2770) § **7.** The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

Relending forbidden.

(2771) § **8.** The borrower of a thing for use must not part with it to a third person without the consent of the lender.

Expenses during loan.

(2772) § **9.** The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For

such expense he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

Lender liable for defects.

(2773) § **10**. The lender of a thing for use must indemnify the borrower for damages caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

Lender may require return.

(2774) § **11**. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

Returnable without demand.

(2775) § **12**. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded. The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

Loan for exchange.

(2776) § **13**. A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

Same.

(2777) § **14**. A loan which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter.

Title in borrower; rights.

(2778) § **15**. By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

Lender can not modify contract.

(2779) § **16**. A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.

Sections applicable.

(2780) § **17**. Sections 2773 and 2775 apply to a loan for exchange.

CHAPTER XXXI.—DRUGS.

AN ACT to regulate the sale of drugs, medicine, and poison.

[Took effect December 21, 1890.]

SECTION.
1. Sale of poison.
2. Language.
3. Expense.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Sale of poison,

(2781) § **1**. No druggist, apothecary or other person, except practicing physicians in their ordinary practice, shall sell or give away, except upon the order or prescription of a practicing physi-

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cian, any article or articles, belonging to the class usually known as poisons, without first registering in a book kept therefor the name, age, and sex of the person receiving such poison, the quantity sold, the purpose for which it is required, the day and date when delivered, and the name and place of abode of the person for whom it is intended, and carefully marking the word "POISON" upon the label or wrapper of each phial, box or package, and no such person shall sell or give away any such article of poison to any minor except upon the order or perscription of a physician. Every person violating any of the provisions of this section, shall forfeit for each such violation, not less than twenty nor more than one hundred dollars.

Language used.

(2782) § **2.** No practicing physician or surgeon shall write or cause to be written any prescription or receipt in any characters, figures or ciphers other than in the English or Latin language, generally in use among medical practioners; and forevery violation hereof the offender shall forfeit not less than five nor more than twenty-five dollars.

Expense.

(2783) § **3.** All expenses incurred under this chapter, exept such as are herein otherwise chargeable, shall be paid by the town, city, or village in which the same are incurred.

CHAPTER XXXII.—ELECTIONS—SPECIAL.

AN ACT to provide for the election of county, township and road officers for the several counties in the Territory of Oklahoma.

[Took effect December 20, 1890.]

SECTION.
1. Time of holding special election.
2. Division of counties into townships.
3. Establishing polling places.
4. Judges of elections.
5. Judges shall qualify.
6. Clerks chosen.
7. Failure to act.
8. Poll books.
9. Incumbents; tenure of office.
10. Canvass of votes.
11. Publication.
12. Validity and authority.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Time of holding special election.

(2784) § **1.** That on the first Tuesday in February A. D., 1891, the same being the third day of said month, there shall be held an election at which there shall be elected or chosen the county, township and road officers provided for by the laws of this Territory who shall hold their respective offices until their successors are elected and qualified under the general election laws of this Territory.

Division of counties into townships.

(2785) § **2.** Within fifteen days after the passage and approval of this act, the county commissioners of the several counties of Oklahoma Territory shall divide their respective counties into suitable municipal townships.

Establishing polling places

(2786) § **3.** The county commissioners of each of the several counties shall establish the necessary voting places in the several townships created under the provisions of section two of this act, one for each township: *Provided,* That in townships containing

incorporated cities or towns of one thousand people, or more, the commissioners may also establish a voting place for each ward of such city.

Judges of elections.

(2787) § **4.** The county commissioners of the several counties shall appoint for each of such towhships or other voting place, three judges of election, one from the republican, one from the democratic and one from the peoples' party, who shall act as judges of election for the election called under the provisions of this act.

Judges shall qualify.

(2788) § **5.** The judges of election shall qualify by prescribing to an oath of the usual form before some officer authorized to administer oaths, or before each other and they shall open the polls at their designated voting place at the hour of eight o'clock A. M., of the day fixed by section one of this act, and keep the same open until the hour of five o'clock P. M., of the same day.

Clerks chosen.

(2789) § **6.** From and by the electors present at the hour for opening as provided in section five of this act, shall be chosen two poll clerks, who shall qualify by subscribing to an oath of the usual form before one of the judges of election, and perform the duties of poll clerks for such election.

Failure to act.

(2790) § **7.** In case any judge or judges of election appointed under the provisions of this act, fail to appear at his or their designated voting place, such vacancy shall be filled from and by the electors present at the opening of the polls; *Provided*: Such selection shall be made, if possible, from the political party to which such absent judge belongs.

Poll books.

(2791) § **8.** It shall be the duty of the county clerks to furnish poll books for the use of the officers holding said election, and the election shall be conducted, notices issued, the vote counted, returns made and the vote finally canvassed and the final result declared as provided by the laws of Nebraska now in force in this Territory, which are hereby adopted for the purpose of the special election provided for by this act, and for no other purpose.

Incumbents, tenure of.

(2792) § **9.** The persons now filling the county offices, in the respective counties, shall continue to perform the duties of their respective offices until their successors are elected and qualified: *Provided*, That prior to December 25th, 1890, they each qualify anew and in accordance with the laws to take effect and be in force upon the adjournment of this session of the Legislative Assembly: *Provided also,* That in case any such of officers fail to so qualify, the Governor shall, and he is hereby authorized to, at once fill such vacancy by appointment; such appointees to qualify as herein provided and serve until their successors are elected and qualified.

Canvass of vote

(2793) § **10.** The board of county commissioners, shall meet on the second Monday of February, 1891, and canvass the returns and declare the result of the election held under the provisions of this act, and cause certificates of election to issue to the parties elected. The board of county commissioners shall meet again on the third Monday in February, 1891, to approve the bonds of the officers elected at such election. The officers so elected shall enter upon the duties of their respective offices on the fourth Monday of February, 1891.

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Publication.

(2794) § **11**. There shall be five hundred copies of this act printed and distributed by the Secretary of the Territory to the respective county clerks of this Territory for immediate use.

Validity and authority.

(2795) § **12**. This act shall be held as controlling the special election herein provided for and inducting the officers elected thereunder into office and shall not apply to any other election or effect any other act relating to that subject, passed by this Legislative Assembly.

CHAPTER XXXIII.—ELECTIONS—GENERAL.

AN ACT concerning elections and providing penalties for the violations of the provisions thereof.

[Took effect March 1, 1891.

SECTION.

1 Qualified electors; division of townships and precinct; number of votes; inspector's report.
2. Boundaries of precinct, how changed; notice; number of electors.
3 Inspectors; judges; county chairman to select, when; eligibility.
4. County commissioners to appoint inspectors; vacancies; judges, how appointed; election board.
5 Poll clerks.
6. Poll books, blank forms, etc.
7. Oath of judges and inspectors; form of oath.
8 Oath; how administered.
9 Chairman of board; form of oath for clerk.
10 Ballot boxes; how painted; locks.
11. Opening in box; keys.
12. Opening and closing of polls.
13. Notice of intent; absence from territory; notice and copy; violation; clerk's fees.
14. Territorial election bosrd.
15. County board of election commissioners, how appointed; duties.
16. Ballots, how printed; device; certificate of nomination.
17 Name of candidate, when not printed.
18 Governor and clerks to preserve certificates, etc.
19 Certificates, when filed.
20 Governor to certify to clerk.
21 County clerks to publish nominations to office. etc.
22 Duties of Governor and clerk.
23 Questions to be submitted to popular vote
24 Size, color and form of ballots; candidate's names; device.
25. Vacancy, how and by whom filled, pasteis.
26. Printer of tickets, guilty of felony, when.
27. County clerk's duties; number of ballots; ballots sealed; stamps; expenses.
28 Clerk's allowance; when ballots sent by special messenger.
29 Board of election commissioners guilty of felony, when.
30. Taking away ballots a felony, when, penalty.
31 Duty of inspector; local ballots; seal.
32. Opening of packages of ballots; poll clerk's duties.
33. Cards, what to contain; different languages; posting up ballots and cards.
34. Special messenger dispatched with ballots, when; compensation.
35. Neglect of duty; misdemeanor and fine.
36. Preservation of ballots; ballots burned, records.
37. Room provided; booths; chute; window; expenses.
38. Challenges and poll book holder; challenge; affidavit, form of; oath, form of; affidavit as to illegal voters; arrest.
39. Affidavit as to illegal voter; arrest.
40. Perjury.
41. Voter, employment of; misdemeanor.
42. Admission to room; ballots, how folded and deposited; interperter; duties of voter.
43. Number of persons admitted to booths and room.
44. Mutilated ballots.
45. Poll clerks, when may prepare ballots; when guilty of felony.
46. Deposit of ballots by inspector, etc.
47. Stamps, removal from election room; perjury when.
48. Counting ballots.
49. Canvass of votes; void, when; poll clerk to record; ballots, how destroyed.
50. Deface, etc; felony, penalty.
51. Clerk, inspector or messenger, when guilty of felony, penalty.
52. Who guilty of misdemeanor; fine.
53. Further penalty.
54. Election board guilty of felony, when. penalty.
55. Attempt to induce violatian; felony.
56. Removal or destruction of cards, etc.
57. Electioneering duties of voters.
58. Officer guilty of felony, when.
59. Submission of constitution to popular vote, ballots when void.
60. Affidavits, disposition of.
61. Township and county elections.
62 Town or city elections; officer's duties.
63. Holidays.
64. Laws repealed.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Qualified electors; division of townships aud precincts, number of votes; inspector's reports.

(2796) § 1. The term "qualified electors" within the meaning of this act, shall include all male persons of the age of twenty-

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one years or upwards belonging to either of the following classes who have resided in the Territory for the period of six months next preceding any election, shall be deemed qualified electors at such election:

First. Citizens of the United States.

Second. Persons of foreign birth who shall have complied with the provisions of the laws of the United Staies on the subject of naturalization.

Third. Civilized persons of Indian descent not members of any tribe.

That the county commissioners of each county in this Territory shall, at their first session after the taking effect of this act, divide the townships of their respective counties into election precincts, and establish the boundaries of the same. Each board of commissioners shall designate at least one place of holding elections in each township and every township in which only one place of holding elections is designated shall constitute a precinct. There shall be but one voting place in a precinct. Each precinct shall contain as nearly as practicable two hundred electors, based on the number of votes cast at the last election; but no precinct shall contain more than two hundred and fifty electors. If at any election hereafter, two hundred and fifty or more votes shall be cast at any voting place, it shall be the duty of the inspector in such precinct to report the same to the board of county commissioners, who shall at their regular meeting divide such precinct as equally as possible so that the new precincts formed thereof, shall each contain two hundred electors as nearly as practicable; but no precinct shall contain more than two hundred and fifty electors, and shall report such division to the county clerk of such county, and to the Governor of the Territory, together with the estimated number of votes in each of the new precincts. If such board shall fail to act as herein directed, any qualified voter of the county may apply for a writ of mandamus to compel a performance of this duty.

Boundaries of precinct, how changed, notice; number of electors.

(2797) § **2**. The board of commissioners of any county may change the boundaries of any precinct within such county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change any place of holding elections when public convenience or public good may require it: *Provided*, That no such change, division or consolidation shall be made after the July term of such commissioners' court next preceding an election: *And provided further*, That no change, division or consolidation shall be valid without giving due notice at least one month before any election, by publication in two newspapers published in said county, representing the two political parties which cast the highest number of votes in the Territory at the last general election, or by posters put up in four of the most public places in each precinct: *And provided further*, That no precinct shall be enlarged so as to contain more than two hundred and fifty electors.

Inspectors; judges, county chairmen to select, when; eligibility.

(2798) § **3**. Township trustees shall by virtue of their office, be inspectors of elections in the precincts in which they respec-

tively reside, and shall prior to opening the polls in such precinct appoint as judges of elections two qualified electors of such precinct, who shall have been citizens and resident householders therein for at least one year next preceding such election, and who are members of different political parties and of the parties which cast the highest number of votes in the Territory at the preceding general election: *Provided*, That if at least one week or more prior to such election the chairman of the county central committee of either of the two parties that cast the largest number of votes in the Territory at the last general election shall designate a member of such party as judge, having the same qualification as above described, he shall be appointed, and such judges, together with the inspector, shall constitute a board of election. No person shall be eligible as a member of the board of election who has anything of value bet or wagered on the result of such election, or who is a candidate to be voted for at such election, or who is father, father-in-law, son, son-in-law, grandfather, grandson, or brother of any candidate at such election. If at any time before or during an election, it shall be made to appear to any inspector by affidavit of two or more qualified electors of the precinct that either of the judges is disqualified under the provisions of this act, he shall at once remove such judge and fill the place with a qualified person of the same political party as the judge removed; and in case such disqualified judge shall have taken the oath of office hereinafter prescribed, the inspector shall place such oath and affidavit before the next grand jury of the county.

County commissioners to appoint inspectors; vacancies; judges, how appointed; election board.

(2799) § **4.** Whenever any board of county commissioners shall designate more than one precinct in any township, it shall at the July term of said board next preceding any election appoint in each precinct in which no township trustee resides, as inspector of such election, some qualified voter of such precinct, who shall have been a citizen and resident house-holder in such precinct for at least one year next preceeding such election. Such board of county commissioners shall hold a special session one week before each election, shall fill all vacancies that may have occurred in the office of inspector, and shall fill any vacancy occurring thereafter at any regular or called session of the board previous to the election. Such appointed inspector shall, before the time of opening the election in his precinct, appoint two election judges, if the same have not been already appointed, as hereinbefore provided, in the same manner and under the same requirements as provided for township trustees acting as inspectors; and such judges and inspectors shall constitute the board of election for such precinct. If any member of an election board shall fail to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a member of his political party to serve in his stead: *Provided*, That if the qualified electors of his party present at the polls shall nominate a qualified person for such vacancy, such nominee shall be appointed. If none of the members of an election board shall appear at the hour appointed for opening the polls, the qualified electors present shall elect a board *viva voce*, as

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Poll clerks

(2800) § **5**. Such board of election shall appoint as poll clerks two qualified electors of such precinct, one from each of the two parties that cast the largest vote in the Territory at the last general election: *Provided*, That if four days or more prior to such election the chairman of the county central committees of either of the two parties that cast the largest number of votes in the Territory at the last general election shall designate a member of such party as poll clerk, such nominee shall be appointed.

Poll books, blank forms, etc

(2801) § **6**. The county clerk of each county in this Territory shall make out and cause to be delivered to the inspector of the several precincts in their respective counties, at least ten days previous to any election, a suitable number of blank forms of poll books, containing one column headed "names of voters" and an additional column headed "number of voters," and also forms of election returns, with proper captions, forms of oaths and forms of certificates and tally papers necesssry to be used in all elections hereafter held in this Territory.

Oath of judges and inspectors, form of oath.

(2802) § **7**. Before any election shall be opened the inspector and judges shall each make oath to support the constitution of the United states and Organic Act of this Territory, to faithfully and impartially discharge the duties assigned by law, that they will not knowingly permit any person to vote who is not qualified, and not knowingly refuse the qualified vote of any elector, or cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of the qualification of such person as an elector, that they will not disclose or communicate to any person how an elector voted or how any ballot was folded, marked or stamped; and that they are now and for one year next preceding have continued to be *bona fide* resident citizens of the township in which such precinct is situated; and that they have nothing of value bet or wagered upon the result of said election, and they are not related to any person to be voted for at said election within the degrees named in section three of this act; which oath shall be in writing or printed, and shall be subscribed and executed before some person authorized by law to administer oaths, which officer shall attach thereto his *jurat*; and such oath shall then be attached to the poll book and with it returned to the clerk's office of his county, as hereinbefore provided. Which oath shall be in the following form:

TERRITORY OF OKLAHOMA, } SS.
.....COUNTY. }

I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and the Organic Act of this Territory; that I will faithfully and impartially perform the duties as inspector or judge of elections assigned by law; that I will not knowingly permit any person to vote who is not qualified; and will not refuse the oath [vote] of any qualified elector or cause any delay to persons offering to vote further than is necessary to procure the satisfactory information of the qualifica-

tion of such person as an elector; that I am now and have been continuously for one year next preceding this date a citizen and *bona fide* resident of the township in which the precinct in which I am to act as a member of the election board is situated, and that I will not disclose or communicate to any person how an elector has voted at such election, or how any ballot has been folded, marked or stamped; that I have nothing of value bet or wagered upon the result of said election and am not a candidate at this election, and am not related to any person to be voted for at this election within the degrees named in section three of the election law.

Subscribed and sworn to before me this.....day of.....

Oath, how administered.

(2803) § **8.** If no person present be authorized by law to administer the oath of office, the inspector shall administer the same to the judges and one of such judges shall then administer said oath to the inspector.

Chairman of board; form of oath for clerks,

(2804) § **9.** The inspector shall be chairman of such board, and before the reception of any vote, shall administer an oath to the clerks of election, that they will faithfully discharge their duties as such. After the organization of the board of elections, the inspector may administer all necessary oaths which may be required in the discharge of its duties, and all oaths shall be written or printed and shall be signed by the persons making such oaths in the presence of such board of elections, and the person administering such oaths shall affix his *jurat* thereto, and said affidavit shall be attached to and returned with the poll lists to the office of the county clerk. The oaths herein prescribed for the clerk of elections shall be in the following form, namely:

TERRITORY OF OKLAHOMA } ss.
.....COUNTY. }

I do solemnly swear (or affirm as the case may be) that I will faithfully and honestly discharge my duties as clerk of the election in.....precinct and.....ward (.....or.....township) in .....county, Oklahoma Territory, and that I will not disclose or communicate to any person how any elector voted, or how any ballot was folded, marked or stamped.

Subscribed and sworn to before me this..... day of.....

Ballot boxes; how painted, locks

(2805) § **10.** The board of county commissioners of each county shall provide, at the expense of the county, two ballot boxes, one painted red for the reception of the ballots prepared by the Territorial board of election commissioners, and one painted white for the reception of the ballots prepared by the county board of election commissioners for each precinct; each ballot box shall have at least two locks of different kinds, and combinations, so that the key of one will not unlock the other, and be otherwise so constructed as to contribute toward the prevention of fraud.

Opening in box; keys.

(2806) § **11.** An opening shall be made in the lid of each box sufficient only for a single ballot; and at the time the election is opened, the inspector and judges shall see that there are no

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ballots in the boxes before the voting begins, and shall thereupon securely lock the box and give one key to each box to one of the judges who is in politics opposed to the inspector, the inspector retaining the other key; and the same shall not be again opened until the polls are closed, and the board is ready to immediately proceed with the counting.

Opening and closing of polls.

(2807) § **12.** The election shall be opened in the forenoon at the hour of eight o'clock and continue open until four o'clock in the afternoon, after which the board may close the election at any time, when all the electors have voted, or when fifteen minutes have passed without a vote being tendered; but the polls shall in no case be kept open after six o'clock of the afternoon; and the polls shall not be closed before six o'clock, except by the unanimous consent of all the members of the election board; but whenever the polls are closed, proclamation must be made of the fact of such closing by the inspector, to the people outside, in a loud and audible tone of voice, and a minute of such proclamation, and of the time when the same was made, must be entered on the tally sheets by the clerks, and after such minute has been made no more votes shall be received: *Provided*, That upon the petition of twenty legal voters and house-holders of any precinct in the Territory, presented to the board of county commissioners at their July session next preceding any election in the county in which such precinct or precincts are situated, petitioning said board for the opening of the election at the hour of six o'clock in the forenoon, it is made the duty of the board of commissioners to grant and enter of record the prayer of such precinct petitioners; and it is made the further duty of the board to direct the auditor of the county to publish in two newspapers of general circulation published in said county, representing the leading national political parties opposed to each other, for three successive weeks, a notice setting out fully the name of the precinct or precincts and the township, town or city in which such precinct or precincts are situated, so petitioning for the opening of the polls at six o'clock in the forenoon, and the board shall enter upon the record an order requiring the polls of every such precinct to be opened accordingly: *Provided, further*, That in all cities and incorporated towns having a population of one thousand or more, as shown by the last United States census, the polls shall be opened at six o'clock in the forenoon on the day of such election and closed at six o'clock in the afternoon of said day.

Notice of intent, absence from territory, notice and copy, violation, clerk's fees

(2808) § **13.** Each elector shall vote, by ballot, in the precinct wherein he resides. Any person, who having been a resident of Oklahoma Territory, shall have absented himself from the Territory for a period of six months or more, or who shall have gone to any other state or sovereignty with the intention of voting therein, or during any absence in another state or sovereignty shall have voted therein, and also, any person who shall not have been a *bona fide* resident of this Territory, and of the county in which he resides, at least six months before any election, shall before being entitled to vote at any election in the Territory register a notice of his intention to become a qualified elector there-

in, in the office of the county clerk of the county in which he resides. Whoever shall be absent from the Territory for a period of six months or more, on business of the Territory or the United States, shall at the time he offers to vote, produce a certificate from the county clerk that his name has continuously, since his departure from the Territory on such business, been upon the tax duplicate of said county for the purpose of taxation, during his absence from the Territory, and that he is still a tax payer in said county; and failing to produce such certificate, such person shall not be permitted to vote. Such registration shall be made at least three months prior to any such election, and the notice shall state such person's name, age and place of residence (by which shall be understood his lodging place), and the notice shall be in the form following, and sworn to before such clerk:

TERRITORY OF OKLAHOMA } SS.
.....COUNTY. }

I,....., the subscriber hereto, hereby declare my intention to become a qualified elector under the laws of the Territory of Oklahoma; that I was.....years of age on my last birthday; that my lodging place is now..... .....(here insert exact location); and I was a *bona fide* resident of the precinct in which I lodge: *Provided*, that the provisions of this section respecting such registration and notice shall not apply to any voter who, six months or more previous to any election shall have registered with said clerk a notice declaring his intention to hold his residence in this Territory during a contemplated absence, and that during such absence he will not exercise the right of suffrage elsewhere and which notice shall be as follows, and shall be sworn to before said clerk:

TERRITORY OF OKLAHOMA, } SS.
..... COUNTY. }

I....., the subscriber hereto, a qualified voter of.....(here insert the name of his precinct, ward, township, town and city,) in said county, intending to absent myself, do hereby declare my purpose to hold my residence as a voter in said Territory, and that I will not exercise the right fo suffrage elsewhere during my absence.

On the filing of any notice, as provided for in this section, it shall be the duty of such clerk to enter the name and residence of said elector and date of the filing of said notice in a book furnished for said purpose, to be open at all times to the inspection of the public, and safely preserve said original notice and deliver a certified copy of the same to the elector so registering, and on demand of any challenger or member of the election board such elector shall be requested to produce the same before being allowed to vote. No person shall register for any other person, or in the name of any other person, or present the copy of the register for any other person at a polling place, or induce, hire, or advise any other person not to register who may be required to register as above. Any person violating the provisions of this section, or who shall vote or attempt to vote, without having been registered

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when required to do so as above, shall be guilty of felony and upon conviction, shall be imprisoned in the penitentiary for not less than one or more than five years, and be disfranchised for any determinate period. The clerk shall be allowed ten cents and no more, for each registration and certificate thereof, to be paid by the elector in full for all services connected therewith.

Territorial election board.

(2809) § **14.** The Governor of the Territory and two qualified electors by him appointed, one from each of the two political parties that cast the largest number of votes in the Territory at the last preceding general election, shall constitute a Territorial board of election commissioners. Such appointment shall be made at least thirty days previous to each general election, and if, prior to that time, the chairman of the Territorial central committee of either of such parties shall nominate in writing, a member of his own party for such appointment, the Governor of the Territory shall appoint such nominee. In case of death or disability of either appointee, the Governor of the Territory shall notify the chairman of the said central committee of such appointee's political party, and such chairman may, within three days thereafter, recommend a successor, who shall thereupon be appointed: *Provided*, That if such chairman shall fail to make recommendations of appointment within the time specified, the Governor of the Territory shall make such appointment of his own selection from such political party. It shall be the duty of said board to prepare and distribute ballots and stamps for election of all officers for whom all the electors of the Territory are entitled to vote, in compliance with the provisions of the election law. The members of such board shall serve without compensation.

County board of election commissioners, how appointed; duties of.

(2810) § **15.** In each county in the Territory, the county clerk and two persons by him appointed, one from each of the two political parties that cast the largest number of votes in the Territory at the last general election, shall constitute a county board of election commissioners. Said appointment shall be made in all respects as appointments as the Territorial board of election commissioners are required to be made by the Governor of the Territory, except that the privilege of nomination shall belong to the chairman of the county central committees of the two parties aforesaid. It shall be the duty of such board to prepare and distribute ballots for election of all officers to be voted for in such counties other than those who are to be voted for by all the electors of the Territory in compliance with the provisions of this act. The members of such board shall serve without compensation.

Ballots, how printed, device; certificate of nomination, etc.

(2811) § **16.** The said board of election commissioners shall cause to be printed on the respective ballots the names of the candidates nominated by the convention of any party that cast one per cent of the total vote of the Territory at the last preceding general election, as certified to said board by the presiding officer and secretary of said convention, or in case of primary election by the chairman and secretary of any county or township committee; and also the names of any candidates for office when petitioned so to do by electors qualified to vote for such candidate, as fol-

lows: For a Territorial officer, or any officer for whom all the electors of the Territory are entitled to vote, five hundred petitioners; for a representative in congress from any Congressional district, two hundred petitioners; for a county officer, member of the general assembly, or prosecuting attorney, twenty-five petitioners; for an officer of a township, ward or other division less than a county, twenty petitioners. The signatures of such petition need not be appended to one paper, but no petitioner shall be counted except his residence and post office address be designated. Such petition shall state the names and residence of each of such candidates, that he is legally qualified to hold such office; that the subscribers desire and are legally qualified to vote for such candidate; and may designate a brief name or title of the party or which candidate, together with any simple figure or device by which they may be designated on the ballots. The certificate of nomination by a convention or primary election shall be in writing and shall contain the name of each person nominated, his residence and the office for which he is nominated, and shall designate a title for the party of principle which such convention or primary election represents, together with any simple figure or device by which its list of candidates may be designated on the ballots; said certificate shall be designated by the presiding officer and secretary of such convention, or by the chairman and secretary of the county, city or township committee, who shall add to their signatures their respective places of residence and acknowledge the same before an officer duly authorized to take acknowledgments of deeds. If the certificate of nomination of any Territorial convention, shall request that the figure or device selected by such convention to be used to designate the candidates of such party on the ballots for all the elections throughout the Territory, such figure or device shall be so used until changed by request of a subsequent Territorial convention of the same party. Such device may be the figure of a star, an eagle, a plow or some such appropriate symbol, but the coat of arms or seal of the Territory or the United States, the national flag, or any other emblem common to the people at large shall not be used as such device. A certificate of such acknowledgment shall be appended to such instrument. In case of death, resignation or removal of any candidate subsequent to nomination, unless a supplemental certificate or petition of nomination be filed, the chairman of the Territory, county, city or township committee shall fill such vacancy. In case of division in any party, and claimed by two or more factions to the same party, name or title, or figure or device, the board of election commissioners shall give the preference of name to the convention held at the time and place designated in the call of the regularly constituted party authorized, and if the other faction shall present no other party name, title or device, the board of election commissioners shall select a name or title, and place the same upon the list of candidates on said faction on the ballot, and select some suitable device to designate its candidates. If two or more conventions be called by authorities claimed to be the rightful authorities

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of any party, the proper board of election commissioners shall select some suitable devices to distinguish one faction from the other, and print the balance accordingly: *Provided, however*, That if any political party entitled to nominate by convention shall in any case fail to do so, the name of all the nominees by petition for any office who shall be designated in their petitions as members of and candidates of such party shall be printed under the device and title of such party on the ballots, as if nominated by convention. Certificates and petitions of nomination of candidates of offices to be voted for by the electors of the entire Territory shall be filed with the Governor of the Territory. Certificates and petitions of nominations of candidates for offices to be voted for by electors of any district or division of the Territory exclusively shall be filed with the county clerks of the counties or county included in or including such district or division.

Name of candidate, when not printed.

(2812) § **17.** If any certificate or petition of nomination shall contain the name of more than one candidate for any office to be filled, neither name shall be printed as a candidate for such office. If any person shall join in nominating by petition more than one nominee for the same office to be filled, such person shall not be counted as a petitioner for either nomination.

Governor and clerks to preserve certificates, etc.

(2813) § **18.** The Governor of the Territory and county clerks shall cause to be preserved in their respective offices all certificates and petitions of nominations filed therein under the provisions of this act for six months after the election for which such nominations were made.

Certificates, when filed.

(2814) § **19.** Certificates and petitions of nominations filed with the Governor of the Territory, shall be filed not more that sixty days, and not less than twenty days, before the day fixed be law for the election of the persons in nomination. Certificates and petitions of nomination herein directed to be filed with the clerk of the county, shall be filed not more than sixty days and not less than fifteen days before election.

Governor to certify to clerk.

(2815) § **20.** Not less than eighteen days before an election of the Territory to fill any public office for which all the electors are entitled to a vote, the Governor of the Territory shall certify to the county clerk of each county the name and place of residence of each person nominated for such office, as specified in the certificate and petition of nominations filed with the Governor of the Territory, and shall designate therein the device under which the group or list of candidates of each party will be printed and the order in which they will be arranged.

County clerk to publish nominations to office, etc.

(2816) § **21.** At least seven days before an election to fill any public office at which the electors of any county are entitled to vote, the county clerk of such county shall cause to be published in the weekly newspapers within the county, the nominations to office certified to him by the Governor of the Territory, and also those filed with the county clerk. He shall make no less than two publications in each of such newspapers before election; one of such publications in each newspaper shall be upon the last day upon which such newspaper is issued before election. Such pub-

lication shall be made in two newspapers representing the political parties that at the last preceding general election cast the largest number of votes in the Territory, if such papers there be: *Provided*, That in all cities where a daily paper is published, such notice shall also be published in two daily papers representing such political parties, if such there be; the lists of nominations published by the county clerks shall be arranged as far as practicable, in the order and form in which they will be printed upon the ballots and shall designate the devices under which the group or list of candidates of each party will be printed.

Duties of Governor and clerk.

(2817) § **22**. That the Governor of the Territory shall not certify the name of a candidate whose certificate of nomination shall have been filed in his office who shall have notified him in a writing signed and executed with the formalities prescribed for the execution of an instrument to entitle it to record that he will not accept the nomination contained in the certificate or petition of nomination. The county clerk shall not include in the publication to be made according to section twenty-three hereof, the name of any candidate whose petition or nomination shall have been filed in his office who shall have notified him in like manner that he will not accept the nomination. The names of such candidates shall not be included in the names of the candidates to be printed in the ballots as hereinafter provided.

Questions to be submitted to popular vote.

(2818) § **23**. Whenever a question is to be submitted to the people of the Territory for popular vote, the Secretary of the Territory shall duly and not less than thirty days before election, certify the same to the clerk of each county in the Territory, and the clerk of each county shall include the same in the publication provided for in section twenty-one in this act.

Size, color and form of ballots, candidates, names; device.

(2819) § **24**. The board of election commissioners shall cause the names of all candidates of their respective jurisdictions to be printed on one ballot, all nominations of any party or group of petitioners being placed under the title and device of such party or petitioners, as designated by them in their certificate or petition, or, if none be designated, under some suitable title or device. The ballots shall be of uniform size and of the same quality and color of paper, and sufficiently thick that the printing cannot be distinguished from the back. All ballots prepared by the Territorial board of election commissioners shall be printed on red tinted paper, and put up in blocks of one hundred each. All ballots prepared by the county board of election commissioners shall be printed on white paper, of the same device for designating candidates be selected by two parties or groups of petitions, it shall be given to the one which first selected it, and a suitable device shall be selected for the other. The arrangement of the ballot shall, in general, conform as nearly as possible to the plan hereinafter given, and the device named and list of candidates of the democratic party shall be placed in the first column on the left hand side of said ballot, of the republican party in the second column, of the peoples' party in the third column, and of any other party in such order as the board of election commissioners shall decide.

Dem.	Device, Democratic Ticket.	Rep.	Device, Republican Ticket.	Prohib.	Devise Prohibition Ticket.
Dem.	For Governor, Courtland C. Matson.	Rep.	For Governor, Alvin P. Hovey.	Prohib.	For Governor, Jos. D. Hughes.
Dem.	For Lieut. Governor, Wm. R. Myers.	Rep.	For Lieut. Governor, Ira J. Chase.	Prohib.	For Lieut. Governor, Robt. Gale.

Vacancy, how and by whom filled; pasters

(2820) § **25**. In case of death, removal or resignation of any candidate after the printing of such ballots and before such election, it shall be lawful for the chairman of the Territory, district, or county political organization of which such candidate was a member to make a nomination to fill such vacancy, and to provide the election board of each precinct in which such candidate is to be voted for, and a number of pasters containing only the name of such candidate at least equal to the number of ballots provided each precinct, but no pasters shall be given to or received by any one except such election board and such chairman, and it shall be the duty of the polling clerks to put one of such pasters in a careful and proper manner and in the proper place, on each ticket before they shall sign their initials thereon.

Printer of tickets guilty of felony, when.

(2821) § **26**. If the printer of such ballots, or any person employed in printing the same, shall give or deliver or knowingly permit to be taken, any of said ballots by any person other than a member of the board of election commissioners, for which such ballots are being printed, or shall print or cause or permit to be printed, any ballot in any other form than the one prescribed by this act, or with any other name thereon, or with the names spelled, or the names or devices thereon arranged in any other way than that authorized and directed by said board of election commissioners, he shall be guilty of felony, and on conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than two years, and be disfranchised for any determinate period not less than ten years.

County clerks duties; number of ballots, ballots sealed; stamps; expenses.

(2822) § **27**. It shall be the duty of each county clerk to appear in person, or by specially authorized deputy, bearing credentials given under the seal of the district court, at the office of the Governor of the Territory, not more than fourteen nor less than ten days prior to each general election, and the Territorial board of election commissioners shall thereupon deliver to said clerk fifteen ballots to every five voters and fraction thereof in each precinct of his county at the last general election, or if a new precinct has been established in such county, ten ballots for every five voters of the estimated vote as reported by the board of county commissioners: *Provided however*, That if it shall be made to appear by the affidavit of such clerk that any precinct has so increased in population as to have fifty per cent more voters than at the last election, or at the time of estimate by the board of county commissioners, the Territorial board of election commissioners shall deliver to him three ballots for every voter so declared by him under oath, to be resident in such precinct. The ballots

shall, in the presence of the clerk, be wrapped and tied in packages plainly marked, one for each precinct, and securely sealed with wax, and the clerk shall give his receipt for the same, and for the safe sealing of such ballots such board shall provide itself with a seal of such design as it may deem proper, but the same design shall not be used for two consecutive elections. The Territorial board of election commissioners shall also provide and enclose in each of said sealed packages, three stamps bearing a cross (X) or such other design as they may select, together with ink pads or other necessary apparatus ready for use. The Territorial board of election commissioners shall from time to time certify to the Auditor of the Territory the necessary expenses of the preparation any distribution of the territorial ballots and stamps, and the Auditor shall audit and issue his warrants for the same, which shall be paid out of any funds in the Territorial treasury not otherwise appropriated.

Clerk's allowance, when ballots sent by special messenger.

(2823) § **28.** An allowance shall be made to the clerk by the board of county commissioners of five cents per mile for the distance necessarily travelled in going to and returning from the office of Governor of the Territory; but in case said clerk of any county shall fail to appear at the office of the Governor of the Territory by the close of the tenth day prior to election, the Territorial board of election commissioners shall forthwith dispatch a special messenger to such county with the ballots for the county; which messenger, before receiving such ballots, shall take and subscribe to an oath to be administered to him by the Secretary of the Territory which oath shall be filed with said board of election commissioners and shall be in the words following:

TERRITORY OF OKLAHOMA, } ss.
.....COUNTY.

I, ..., swear (or affirm as the case may be) that I will take charge of the election ballots delivered to me by the Territorial board of election commissioners for the county of....., and will safely deliver said ballots in sealed packages and in the same condition as received by me, the clerk of said county at the earliest time that I can reach the county seat of said county. So help me God.

.....

Subscribed and sworn before me this.....
day of.....18....

.....

And in such case said messenger shall be allowed three dollars per day for the time necessarily employed and three cents per mile for the distance necessarily travelled by him, which allowance shall be certified to the treasurer of such county, and deducted from the first moneys thereafter accruing to such clerk, payable by the treasurer. The amount so deducted shall be remitted, by the county treasurer to the Treasurer of the Territory.

Board of election commissioners to be guilty of felony, when,

(2824) § **29.** If any member of the board of election commissioners, shall give or deliver to any other person any of said ballots, or shall permit any of them to be taken away, except as herein

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provided, he or they shall be guilty of a felony, and on conviction shall be punished by imprisonment in the penitentiary for not less than one nor more than two years.

Taking away ballots a felony, when; penalty.

(2825) § **30.** If any person shall take or remove in any manner, feloniously or with the consent or permission of the custodian for the time, from any place where they may lawfully be under this act, any of such ballots or stamps, or be found in custody or possession of such ballots or stamps (except as an officer or custodian, under this act, or while within the polling place for the purpose of voting); or if any such custodian or official shall consent to, or permit any of such ballots or stamps to be removed or carried away from the place where they may lawfully be by any person, except an official or custodian under this act, whose duty it is to receive the same, such person, custodian or official shall be deemed guilty of a felony, and on conviction shall be punished by imprisonment in the penitentiary at hard labor for not less than one nor more than two years.

Duty of inspector, local ballot, seal.

(2826) § **31.** It shall be the duty of each election inspector, or in case he can not attend, some other member of the election board, authorized in writing by the inspector, to appear at the office of the county clerk of his county not more than six nor less than two days before each election, and the county board of election commission shall deliver to him the seal package of ballots and the stamps provided for his precinct by the Territorial board of election commissioners, and also fifteen of the local ballots printed under the direction of the county board of election commissioners for each five or fraction thereof of the number of votes cast at such precinct at the last general election, or if a new precinct, for each five or fraction of five voters as estimated by the county commissioners: *Provided However*, That in case it be made to appear by affidavit of such inspector that the number of voters in his precinct has increased more than fifty per cent since the last general election or estimate by the board of county commissioners, there shall be delivered to him three ballots for each voter so declared under oath by him to reside in the precinct. The local ballot shall be wrapped and tied in packages and securely sealed with wax in the presence of the inspector or his represntative, who shall receipt for the same;and for the safe sealing of such ballots the county board of election commissioners shall provide themselves with a seal of such design as they may deem proper, and said packages shall not be opened until delivered to the election board of the respective voting precincts to which they are directed and said board shall be fully organized and ready for the reception of votes as in this act provided.

Opening of packages of ballots, poll clerk's duties.

(2827) § **32.** At the opening of the polls, after the organization of and in the presence of the election board, the inspector shall open the package of ballots in such a manner as to preserve the seals intact. He shall then deliver to the poll clerk of the opposite political party from his own, twenty-five each of the Territorial and local ballots, and to the other poll clerk the stamps for marking the ballots. The poll clerks shall at once proceed to write their initials in ink on the lower left hand corner of the

back of each of said ballots, in their ordinary hand-writing and without any distinguishing mark of any kind. As each successive elector calls for a ballot the poll clerk shall deliver to him the first signed of the twenty-five ballots of each kind and the inspector shall immediately deliver to the poll clerks another ballot of each kind which the poll clerk shall at once countersign, as before, and add to the ballots already countersigned, so it shall be delivered for voting after all of those heretofore countersigned.

Cards what to contain, different languages, posting up of ballots and cards

(2828) § **33**. The county board of election commissioners of each county shall cause to be printed in large type on cards, in English and such other language as they deem necessary, instructions for the guidance of electors in preparing their ballots. They shall furnish twelve of such cards in each of the languages determined upon by them to each of the election inspectors at the same time they deliver to him the ballots for his precinct. Each inspector shall cause to be posted one of each of said cards in each place or compartment provided for the preparation of ballots, and one of each kind of such cards at or near the outer end of the chute leading to the polling place, and not nearer than fifty feet of the polling place, and not less than three of each of said cards and three samples of each of the Territorial and local ballots in and about the polling place at the opening of the polls on the day of election, which sample ballots shall be printed on different colored paper than the genuine ballots. Said cards shall contain full instructions to the voters as to what must be done:

First. To obtain ballots for voting; second, to prepare the ballots for voting; third, to obtain a new ballot in place of one accidently defaced, mutilated or spoiled; also copies of sections 43, 50, 55, 56, 57 and 58 of this act.

Special messenger dispatched with ballots, when; compensation.

(2829) § **34**. In case any inspector or his representative shall fail to appear at the office of the county clerk by the close of second day prior to any election. the county board of election commissioners shall forthwith dispatch a special messenger to his precinct with the ballots and stamps for such precinct. Such messenger shall be allowed two dollars per day for his time and shall promptly report to such clerk and file with him the receipt of the person to whom he delivered such ballots and stamps and his affidavit stating when and to whom he delivered such ballots and stamps, and such inspector shall receive no compensation for his services at such election.

Neglect of duty; misdemeanor and fine, loss of ballots; new supply.

(2830) § **35**. Any inspector who shall wilfully or negligently fail to appear at the clerk's office, in person or by representative, as herein provided, shall be guilty of a misdemeanor, and on conviction shall be fined not less than ten dollars nor more than one hundread dollars, and shall thereafter be incompetent to serve as inspector. If by any accident or casualty the ballots delivered to any clerk, inspector or other messenger shall be lost or destroyed, it shall be the duty of such person in custody to report the loss at once to the board of election commissioners, from which the same were obtained, and make affidavit of the circumstances of the loss, whereupon such board shall at once re-supply such person. In case such person in custody fails or refuses to report and make

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proof of loss, any qualified elector may do so, and thereupon such board shall at once send a new supply by special messenger, as provided in other cases. In case, for any reason, there shall be found no ballots or other necessary means or contrivance for voting at the opening of the polls, it shall be the duty of the election board to secure the same as speedily as possible, and, if necessary, such board may have ballots printed: *Provided, however*, That such ballots shall conform as nearly as possible to the genuine ballots, and the printing and the care of the same shall be under the same provision and penalties as the printing and care of the other ballots prescribed in this act.

Ballots preserved or burned; records.

(2831) § **36**. The various boards of county commissioners shall preserve the ballots that are left over in their hands after supplying the precincts as hereinbefore provided, until six o'clock p. m., of the day of election, and shall then count and destroy, by totally consuming by fire, all such ballots but one, which shall be securely pasted in the election record immediately preceding the place where the vote is to be recorded. They shall also cause to be entered below such ballot the number of ballots printed by them, the number delivered to each messenger and the number destroyed by them.

Room provided, booths, window, chute, expenses.

(2832) **37**. It shall be the duty of the county commissioners in each county, before each election, to provide for and secure in each precinct of the county a suitable room in which to hold the election, and to have placed therein a railing separating the part of the room to be occupied by the election board from the remainder of the room and also two booths or compartments in which electors shall mark their ballots, screened from observation, each containing a counter or shelf. Booths shall be so constructed and arranged that all the members of the election boards can see whether more than one voter enters any one of such booths at one time. The portion of the room set apart for the election board shall include a window at which the voters shall appear for challenge, and such voter shall immediately announce his full and true name to the challengers. The board of county commissioners shall also provide for each precinct a chute or passage with a railing, rope or wire on each side, commencing fifty feet away from and leading to such polling place; passing such window for challenge and thence to the the entrance of the room in which the election is held. The expenses of such preparation shall be defrayed as other expenses of the county by the board of county commissioners. No election shall be held in a room in which spiritous, vinous or malt liquors are kept or sold.

Challenges and poll book holder; challenge.

(2833) § **38**. One challenger and one poll book holder appointed and designated by each party organization, shall be entitled to stand at the sides of the chute near the challenge window. No other person shall remain within fifty feet of the same, except for the purpose of offering his vote; and voters shall approach and enter the chute in the order in which they appear for the purpose of voting. If any person offering to vote shall be challenged by one of such challengers or by any member of the election board, he shall stand aside and not be entitled to vote unless he makes

an affidavit in writing that he is a qualified and legal voter of the precinct, and if such affidavit sets forth his name, residence, occupation, place or places of residence during the six months prior to the election with the date of any removal within that time, and the names of two persons who have personal knowledge of his residence in the precinct thirty days and the township six days, and shall, in case he be a person required by this act to be registered, also produce the necessary certificate of registration provided for in this act. He shall then be allowed to vote, unless the challenger or some qualified voter of the precinct makes affidavit in writing that he knows or is informed and verily believes that the person offering to vote is not a legal voter of the precinct; and if the affidavit be on information and belief, he shall set forth the names of the person or persons from whom such information was obtained, and the person offering to vote shall not thereafter be allowed to vote, unless one qualified voter of the precinct, who has been a freeholder and householder in the precinct for at least one year or a resident householder for two years next preceding such election shall make affidavit or affirmation in writing that of his personal knowledge such person offering to vote is a legal voter at the precinct: *Provided*, that if such person so offering to vote be challenged solely or for the additional reason that he is not a citizen of the United States, then such person so challenged for such reason shall take and subscribe the following oath:

I do solemnly swear (or affirm, as the case may be) that I have resided in the United States one year and have declared my intention of becoming a citizen thereof, in conformity with the laws thereof.

The other affidavits herein referred to shall be in the following form:

I do solemnly swear (or affirm, as the case may be), that I am a citizen of the United States; that I am now over the age of twenty-one years, to the best of my information and belief; and that I have been a *bona fide* resident of this Territory for six months immediately preceding this election; that I have resided in the township sixty days and in the precinct thirty days, and that I am now a *bona fide* resident of this precinct; that I am generally known by the name in which I now desire to vote, which is.....; that I have not voted and will not vote in any other precinct in this election; that my occupation is.....; that my present residence is.....; (if in the city or town give the street and number,) and that during the last six months prior to this election I have resided at..... I have removed from.....to..... of the following date.....; and that..... and.....have personal knowledge of my residence in the precinct thirty days and in the township sixty days. I swear that I am informed and believe that....., now offering to vote, is not a legal voter in this precinct, and that I obtained such information from.....and....., I do solemnly swear (or affirm as the case may be) that I am a qualified voter in this precinct; that

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I have been a freeholder or resident householder in this precinct for one year, or a resident householder for two years next preceding this election; that....., who now desires to vote, has resided in this Territory for six months immediately preceding this election; that he has resided in this township sixty days, and in this precinct thirty days, at.....; that he is now a *bona fide* resident of this precinct and a legal voter therein. These facts I know of my own personal knowledge.

Affidavit as to illegal voter; arrest.

(2834) § **39.** If at any time during the election any qualified elector shall make affidavit before the inspector that any person who has voted is an illegal voter in such precinct, the person accused shall at once be arrested by the election constable. Immediately after the close of the election the inspector shall deliver such affidavit to some justice of the peace in the township who shall proceed thereon as if the affidavit had been made before him.

Perjury.

(2835) § **40.** Whoever shall knowingly or wilfully make a false affidavit under the provisions of this act, shall be deemed guilty of perjury.

Voter, employment of, misdemeanor

(2836) § **41.** No person entitled to vote at any general, national, Territorial or county election shall be employed upon the day on which such election shall be held, in any manufacturing, mining, mechanical or mercantile establishment or any railroad or corporation in this Territory during the period of four hours after the opening of any election in the county in which such person is entitled to vote, except as to works of necessity, in which works of necessity every employee shall be given some period of four hours between the opening and closing of the polls on said day; and any district court may enforce the provisions of this section in term time, or in vacation by mandate or otherwise, upon the application of any voter. Every officer of any corporation, owner, superintendent, overseer, or foreman, who employs or permits to be employed any person in violation of this section, shall be guilty of a misdemeanor and fined not less than fifty nor more than five hundred dollars.

Admission to room; ballots, how folded and deposited interpreter, duties of voter.

(2837) § **42.** When a voter shall have been passed by the challengers, or shall have been sworn in, he shall be admitted to the election room: *Provided however*, That not more than three voters shall be allowed in the room at one time. On entering the room, the voter shall announce his name to the poll clerks, who shall register it. The clerk holding the ballots shall deliver to him one Territorial and one local ballot, and the other clerk shall thereupon deliver to him a stamp and both poll clerks, on request, shall give explanation of the manner of voting; if deemed necessary, by unanimous consent of the board an interpreter may be called. The voter shall then, and without leaving the room, go into any of the booths which may be unoccupied and indicate the candidates for whom he desires to vote by stamping the square immediately preceding their names, and indicate his preference on any question or constitutional amendment or other special matter by stamping in front of the words "yes" or "no" under such questions: *Provided*

however, That if he shall desire to vote for all the candidates of one party or group of petitioners, and none other, he may place the stamp on the square preceding the title under which the candidates of said party or group of petitioners are printed, and the vote shall then be counted for all the candidates under that title, unless the name of one or more candidates under another shall also be stamped, in which case the names of the candidates so stamped shall be counted. Before leaving the booth or compartment the voter shall fold his ballots separately, so that no part of the faces thereof shall be exposed, and so that the initials of the poll clerks shall be exposed, and on leaving the booth or compartment shall return the stamp to the poll clerk and deliver the ballots to the inspector, or to the judge who may temporarily be authorized to act for him, who shall forthwith, in the presence of the voter, and of the election board, deposit the same in the respective ballot boxes, the Territorial ballot in the red ballot box and the local ballot in the white ballot box; and the ballot clerks shall write the word "voted" after the name of the voter on the poll list: *Provided, however*, That if any elector shall show his ballot, or any part thereof, to any other person, after the same has been marked, so as to disclose any of the candidates voted for, such ballot shall not be deposited in the ballot box. A minute of such occurrence shall be made on the poll list, and such person shall not be allowed to vote thereafter. The voter shall then leave the room, but no voter to whom a ballot and stamp, or either, have been delivered shall be permitted to leave the room without voting the ballots or returning them to the poll clerk or without returning the stamp to the poll clerk from whom he received it. Any voter who shall attempt to leave the room with a ballot or stamp in his possession, shall be at once arrested on demand of any member of the election board.

Number of persons admitted to booths and room.

(2838) § **43**. Not more than one person shall be permitted to occupy any booth at one time; and no person shall remain in or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than five minutes. Not more than three persons other than the election officers shall be permitted to enter or be in the election room at any one time, and no voter, or person offering to vote, shall hold any conversation or communication with any other person than a member of the election board while in the election room,

Mutilated ballots.

(2839) § **44**. Any person who shall, by accident or mistake, spoil, deface or mutilate his ballot, may, on returning the same to the poll clerks and satisfying them that such spoiling, defacing, or mutilation was not intentional, receive another in place thereof, and such clerks shall make a minute of the fact on the poll lists at the time, and the mutilated ballot shall then be destroyed by the inspector in the presence of the board.

Poll clerks, when may prepare ballots, when guilty of felony.

(2840) § **45**. Any elector who declares that by reason of physical disability or inability to read the English language, he is unable to mark his ballot, may declare his choice of candidates to the poll clerks, who in the presence of the elector and in the presence of each other, shall prepare the ballots in the manner hereinbefore provided, and on request shall read over to such elector the names

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of the candidates as marked. Any one making a false declaration under the provisions of this section, shall, upon conviction be fined in any sum not exceeding twenty dollars, and any poll clerk or poll clerks who shall deceive any elector in selecting or marking any ballot, or mark the same in any other way than as requested, by said elector, shall be guilty of a felony and on conviction shall be imprisoned in the penitentiary for not less than one nor more than two years, and be disfranchised for any determinate period for not less than five years.

Deposit of ballot by inspector, etc

(2841) § **46.** No inspector of election or judge acting for an inspector, shall deposit any ballot upon which the initials of the poll clerk, as hereinbefore, provided for does not appear, or any ballot on which appears externally any distinguishing mark, defacement or mutilation.

Stamps, removed from election room, perjury when.

(2842) § **47.** Any person who shall remove or attempt to remove a ballot or stamp from the election room, or having in his posession outside the election room any ballot or stamp, either genuine or counterfeit, during the election, shall be guilty of a felony, and on conviction, shall be imprisoned in the penitentiary not less than one nor more than two years, and be disfranchised for any determinate period not less than ten years.

Counting ballots.

(2843) § **48.** Immediately on closing the polls, the board shall count all the ballots remaining unvoted, record the number of the same on the tally sheets and destroy all of such ballots by totally consuming by fire.

Canvass of votes; void when, poll clerk to record; ballots, how destroyed

(2844) § **49.** The board shall then proceed to canvass the votes, beginning first with the Territorial ballots and completing them before proceeding with the local ballots, by laying each ballot upon the table in the order in which it is taken from the ballot box, and the inspector and the judge of the election, differing in politics from the inspector, shall view the ballots as the names of the persons voted for are read therefrom. In the canvass of votes, any ballot which is not endorsed with the initials of the poll clerks, as provided for in this act, and any ballot which shall bear any distinguishing mark or multilation shall be void and shall not be counted, and any ballot or part of a ballot from which it is impossible to determine the elector's choice of candidates, shall not be counted as to the candidate or candidates affected thereby: *Provided, however,* That on protest of any member of the board, such ballot and all disputed ballots, shall be preserved by the inspector, and at the close of the count, placed with the seals of the ballot packages in paper bags, securely sealed, and so delivered to the county clerk, with notification to him of the number of ballots so placed in such bags, and of the condition of the seals of the ballot packages. The poll clerks shall also record on the tally sheets memoranda of such ballots and the condition of the seal of the ballot packages; and in any contest of election, such ballots and seals may be submitted in evidence. On completing the count and recording the same on the tally sheets, all the remaining ballots, except those marked, mutilated, or otherwise defective, as in this section hereinbefore described, shall be destroyed by the election board by totally

consuming by fire before adjournment, and thereupon the election board shall immediately make memorandum of the total vote cast for each candidate and deliver a copy thereof to each member of such board.

Deface, etc., felony; penalty.

(2845) § **50.** Any person who shall:

First. Falsely make, or fraudulently deface or fraudulently destroy any certificate or petition of nomination, or any part thereof;

Second. File any certificate or petition of nomination, knowing the same, or any part thereof, to be falsely made; or,

Third. Suppress any petition or certificate of nomination which has been duly filed, or any part thereof; or,

Fourth. Forge or falsely make the official endorsement of any ballot; or,

Fifth. Print or cause to be printed any imitation ballot, or circulate same; or,

Sixth. Conspire with others to do any of said acts, or induce, or attempt to induce any other person to do any of said acts, whether or not said acts, or any of them, be committed or attempted to be committed, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than two years and be disfranchised for any determinate period not less than ten years.

Clerk, inspector or messenger, when guilty of felony, penalty.

(2846) § **51.** Any clerk, inspector or messenger entrusted with the custody of the ballots who shall open any of the packages in which the ballots are contained, or permit any of them to be opened or destroy any of such ballots, or permit them to be destroyed; or give or deliver any such packages or ballots to any person not lawfully entitled to receive them, as hereinbefore provided, or conspire to procure, or in any way aid, abet or connive at any robbery, loss or destruction of any such ballots or packages, shall be guilty of a felony, and on conviction shall be punished by imprisonment iu the penitentiary not less than one nor more than two years, and be disfranchised for any determinate period not less than ten years.

Who guilty of misdemeanor, fine.

(2847) § **52.** If any person not herein authorized so to do, shall enter or attempt to enter the election room, or enter or attempt to enter within the railing leading from the challenge window to the entrance of the election room without first having been passed by the challengers, or having been sworn in as hereinbefore provided, or shall remain within fifty feet of the polling place, contrary to the provisions hereinbefore made, he shall be guilty of a misdemeanor and on conviction thereof, be fined not more than five hundred dollars.

Further penalty.

(2848) § **53.** If any person shall induce, or attempt to induce, any elector to write, paste or otherwise place on his ballot the name of any person or any sign or device of any kind as a distinguishing mark by which to indicate to any other person how such elector has voted, or shall enter into or attempt to form any agreement or conspiracy with any other person to induce or attempt to induce electors, or any elector, to so place any distinguishing name or mark on his bailot, whether or not said act be

committed or attempted to be committed, such person so offending shall be guilty of a felony, and on conviction be imprisoned not more than two nor less than one year in the penitentiary.

Election board, guilty of felony, when, penalty.

(2849) § **54.** If any person being a member of an election board or otherwise entitled to the inspection of the ballots, shall reveal to any other person how any elector has voted, or what other candidates were voted for on any ballot bearing a name not printed thereon by the board of election commissioners, or give any information concerning the appearance of any ballot voted, such person so offending shall be guilty of a felony, and on conviction shall be imprisoned not less than one year nor more than two years in the penitentiary, and be disfranchised for any determinate period not less than ten years.

Attempt to induce violation, felony.

(2850) § **55.** If any person shall induce or attempt to induce any member of an election board to violate any of the provisions of section fifty-six, whether or not such member of the election board shall violate or attempt to violate any of the provisions of this act, such person so offending shall be guilty of a felony, and on conviction shall be imprisoned in the penitentiary not less than one year nor more than two years, and be disfranchised for any determinate period not less than ten years. It shall be the duty of each inspector to distinctly read this and the preceding section to the election board at the opening of the polls, and each member thereof shall thereupon take an oath that he has not violated and will not violate the provisious of said section.

Removal or destruction of cards, etc.

(2851) § **56.** Any person who shall during the election remove or destroy any of the supplies or other conveniences placed in the booths as aforesaid, or deliver to the voter for the purpose of enabling the voter to prepare his ballot, or shall during an election, remove, tear down or deface the cards printed for the instruction of the voters, or shall, during an election, destroy or remove any booth, railing or other convenience provided for such election, or shall induce or attempt to induce any person to commit any of such acts, whether or not any of such acts are committed or attempted to be committed, shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than six months nor more than one year and be disfranchised for any determinate period not less than ten years.

Electioneering, duties of voters.

(2852) § **57.** No officer of election shall disclose to any person the name of any candidate for whom any elector has voted. No officer shall do any electioneering on election day. No person whatever shall do any electioneering on election day within any polling place, or within fifty feet of any polling place. No person shall apply for or receive any ballot in any polling place other than that in which he is entitled to vote. No person shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate or candidates for whom he has marked his vote; nor shall any person examine a ballot which any elector has prepared for voting or solicit the elector to show the same. No person, except an inspector, of election, or judge who may be temporarily acting for him, shall receive from

any voter a ballot prepared by him for voting. No voter shall receive a ballot from any person other than one of the poll clerks; nor shall any person other than a poll clerk deliver a ballot to an inspector to be voted. No voter shall deliver any ballot to an inspector to be voted, except the one he received from the poll clerk. No voter shall place any mark upon his ballot or suffer or permit any other person to do so by which it may be afterwards identified as the one voted by him. Whoever shall violate any provision of this section shall be deemed guilty of a felony, and on conviction shall be punished by imprisonment for not less than six months nor more than one year, and by a fine of not less than one hundred dollars nor more than five hundred dollars, and be disfranchised for any determinate period not less than ten years.

Officer guilty of felony, when.

(2853) § **58**. Any public officer, upon whom any duty is imposed by this act, who shall wilfully neglect or omit to perform such duties or do any act prohibited herein, for which punishment is not otherwise provided, shall be deemed guilty of a felony, and on conviction shall be punished by imprisonment in the penitentiary for not less than six months nor more than three years, or by a fine of not more than three thousand dollars, or by both such fine and imprisonment, and be disfranchised for any determinate period not less than ten years.

Submission of constitution to popular vote; ballots, when void.

(2854) § **59**. Whenever a constitution or constitutional amendment or other question is required by law to be submitted to the popular vote, if all the electors of the Territory are entitled to a vote on such question, the Territorial board of election commissioners shall cause a brief statement of the same to be printed on the Territorial ballots, and the words "yes" and "no" under the same so that the elector may indicate his preference by stamping at the place designated in front of either word. If the question is required by law to be voted on by the electors of any district or division of the Territory, the board or boards of election commissioners of the county or counties, including or included in such division or district, shall cause similar provision to be made on the local ballots. In case any elector shall not indicate his preference by stamping in front of either word, the ballot as to such question, shall be void and shall not be counted.

Affidavits, disposition of

(2855) § **60**. All affidavits provided in this act to be used on the day of election at the several polling places, shall at the close of the count, be placed in a strong paper bag, or envelope, by the election board and securely sealed by them, each member endorsing his name on the back of such bag or envelope. Such bag or envelope shall be delivered within three days after the election, by the inspector, to the clerk of the district court of the county, whose duty it shall be to carefully preserve the same, and deliver it, with the seal unbroken, to the foreman of the grand jury when next in session. It shall be the duty of such grand jury to inquire into the truth or falsity of such affidavits.

Township and county elections.

(2856) § **61**. When any township or county holds an election at a time other than the time of a general election, such election shall be held in conformity with the provisions of this act, and all county and local officers who are required to perform any

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duties in connection with the general election shall perform the same duties in connection with such special or local election, subject to the same provisions and penalties herein prescribed in case of general elections.

Town or city elections; officers duties.

(2857) § **62**. When any town or city shall hold an election at any time other than a time of a general election, such election shall be held in conformity with the provisions of this act, except the duties herein required of the county clerk shall be performed by the village or city clerk, the duties herein required of the board of county commissioners shall be performed by the village trustees or city council; the duties of the county sheriff shall be performed by the city marshal or chief of police, and the rights of nomination of election officers by political parties shall be exercised by the chairman of the village or city committees of such parties, if any such there be. Village and city officers are hereby required to perform the various duties herein prescribed for the county officers in whose stead they act, subject to the same penalties and provisions herein prescribed as to such county officers.

Holidays

(2858) § **63**. All election days shall be legal holidays throughout the district or municipality in which the election is held.

Laws repealed.

(2859) § **64**. All laws and parts of laws inconsistent with the provisions of this act are hereby repealed, *pro tanto*: *Provided, however*, That nothing in this act contained shall impair the effect of any such act as to an offense heretofore committed under the existing laws.

This act shall take effect and be in force on the first day of March, one thousand, eight hundred and ninety-one.

CHAPTER XXXIV.—EXEMPTIONS.

AN ACT to exempt property from forced sale.

[Took effect December 25, 1890.]

SECTION.
1. Property exempt from forced sale, when.
2. Homestead exempt and mortgage void, when.
3. Property belonging to single person exempt, when.
4. Homestead exemption shall not apply, when.
5. Personal property exemptions shall not apply, when.
6. Personal property not exempt, when.
7. Pension money exempt.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

Property exempt from forced sale, when

(2860) § **1**. The following property shall be reserved to the head of every family residing in the Territory exempt from attachment or execution and every other species of forced sale for the payment of debts, except as hereinafter provided:

First. The homestead of the family.

Second. All household and kitchen furniture.

Third. Any lot or lots in a cemetery held for the purpose of sepulture.

Fourth. All implements of husbandry used upon the homestead.

Fifth. All tools, apparatus and books belonging to and used in any trade or profession.

Sixth. The family library and all family portraits and pictures, and wearing apparel.

Seventh. Five milch cows and their calves under six months old.

Eighth. One yoke of work oxen, with necessary yokes and chains.

Ninth. Two horses or two mules and one wagon, cart or dray.

Tenth. One carriage or buggy.

Eleventh. One gun.

Twelfth. Ten hogs.

Thirteenth. Twenty head of sheep.

Fourteenth. All saddles, bridles and harness necessary for the use of the family.

Fifteenth. All provisions and forage on hand, or growing for home consumption; and for the use of exempt stock for one year.

Sixteenth. All current wages and earnings for personal or professional services earned within the last ninety days.

Homesteads exempt and mortgages void, when.

(2861) § **2.** The "homestead" of a family, not in a town or city, shall consist of not more than one hundred and sixty acres of land which shall be in one tract or parcel with the improvements thereon. The homestead in a city, town or village, consisting of a lot or lots, not to exceed one acre with improvements thereon: *Provided*, That the same shall be used for the purpose of a home for the family: *Provided, also*, That any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired: *Provided, however*, That eighty acres of the home-stead upon which the dwelling honse is located shall not be subject to mortgage and any mortgage either legal or equitable which does not leave unincumbered eighty acres according to United States survey containing the dwelling house shall be null and void except for the excess of said eighty acres, and any conveyance of said eighty acres absolute on its face the grantor remaining in actual possession of said eighty acres so conveyed may be shown by parol testimony to have been given for security, and when so shown shall be deemed a mortgage. The exemption herein provlded for must not be construed to apply to the following persons, namely:

First. To a corporation for profit.

Second. To a non-resident.

Third. To a debtor who is in the act of removing his family from the Territory; or,

Fourth. Who has absconded, taking with him his family.

Property belonging to single person exempt, when.

(2862) § **3.** The following property shall be reserved to persons who are not heads of a family, exempt from attachment, execution and every other species of forced sale; except for liens given by the owners:

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First. A lot or lots in a cemetery held for the purpose of a sepulcher.

Second. All wearing apparel.

Third. All tools, apparatus and books belonging to any trade or profession.

Fourth. One horse, bridle and saddle, or one yoke of oxen.

Fifth. Current wages for personal services.

Homestead exemptions shall not apply, when

(2863) § **4**. The exemption of the homestead provided for in this act shall not apply where the debt is due:

First. For the purchase money of such homestead or a part of such purchase money.

Second. For taxes due thereon.

Third. For work and material used in constructing improvements thereon, but in this last case such work and material must have been contracted for in writing and the consent of the wife, if there be one, when the amount contracted exceeds one hundred dollars must have been given in the same manner as is by law required in making a sale and conveyance of the homestead.

Personal property exemptions shall not apply, when.

(2864) § **5**. The exemption of personal property, provided for in this act, shall not apply when the debt is due for rents and advances made by a landlord to his tenant; or to other debts which are secured by a lien on such property.

Personal property not exempt when.

(2865) § **6**. None of the personal property mentioned in this act, shall be exempt from attachment or execution for wages of any clerk, mechanic, laborer or servant.

Pension money exempt.

(2866) § **7**. There shall also be exempt from levy and sale upon execution or attachment to every resident of this Territory who became disabled in the service of the United States as a soldier, sailor, or marine, all pension money hereafter received belonging to such soldier, sailor or marine.

This act shall take effect and be in force from and after the final adjournment of the first session of the Legislative Assembly.

CHAPTER XXXV.—EXHIBITS.

AN ACT to Provide for the Exhibition of the Oklahoma Products at the World's Columbian Exposition.

[Took effect December 25, 1890.]

SECTION.		SECTION.	
1.	Commissioners to "Columbian Exposition."	3.	Powers, limitation of
2.	Compensation of.	4.	Expenses, limitation of.
		5.	Funds for "National Committee."

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Whereas: The act of Congress creating the World's Columbian Commission, provides for the International exhibition of arts, industries, manufactures and the products of the soil, mines and sea, in the city of Chicago, in the State of Illinois, in the years one thousand eight hundred and ninety-two and one thousand eight

hundred and ninety-three; Therefore be it enacted by the Legislative Assembly of the Territory of Oklahoma: Chap. 35.

Commissioners to "Columbian Exposition"

(2867) § **1.** That in order to a proper exhibition of the arts, industries, manufactures and the products of the soil, mines etc. of the Territory of Oklahoma at the World's Columbian Exposition in the years 1892 and 1893, the various boards of county commissioners within the Territory of Oklahoma, are hereby authorized to appoint one commissioner and one lady to assist him for their respective counties, whose duty it shall be to assist and co-operate with the United States Commissioners for the Territory of Oklahoma, in the collection and care of articles for the exposition under such rules and regulations as may be prescribed by the commissioners on behalf of the United States for the Territory of Oklahoma.

Compensation of.

(2868) § **2.** The several county commissioners shall be authorized and empowered to make uniform provisions from the county funds for such uniform compensation as they may deem just for said services of the commissioner and assistant commissioner mentioned in this act: *Provided*, That such commissioner and lady assistant shall not be made before March first. one thoussnd eight hundrd and ninety-one; and provided, that such compensation shall extend only to the time that such persons are actually engaged in the performance of their respective duties; such payment to be made upon vouchers properly made out and sworn to by said commissioners.

Power, limitation of.

(2869) § **3.** The commissioner and lady assistant shall not have power to purchase the products of this Territory to be placed on exhibition, but shall only have power to receive such products as may voluntarily be contributed or furnished by the citizens of said Territory for exhibition without expense to the Territory. The commissioners so appointed in the various counties shall have the power, however, to make contracts for the freight and carriage of such products to and from the city of Chicago, and shall also have power to sell or otherwise dispose of such perishable products as may be placed on exhibition with the consent of the exhibitors, and also to dispose of the products on exhibition of a perishable nature at the close of said exhibition. And all the money thus derived from such sale, shall be paid into the county treasury from which the products so sold were received, to be used for the payment of transportation or other necessary expenses of the exhibition herein provided for.

Expenses, limitation of.

(2870) § **4.** In no event shall the county commissioners of any one county expend more than the sum of one thousand dollars for the purposes provided in this act. And provided further, that at the special election to be held on February third, one thousand eight hundred and ninety-one, there shall be submitted to the voters of the various counties in this Territory the question as to whether or not the board of county commissioners of their county shall incur the indebtedness of not to exceed one thousand dollars in aid of the Columbian Exposition, and if a majority of the votes cast at that election be for the incurring of such indebtedness, then the amount so incurred shall be estimated as

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contigent expenses of the county in determining the amount for which bonds may be issued for the purpose of paying the contigent expenses of the county. If the votes cast in favor of incurring such indebtedness be not a majority of all the votes cast in that election in that county, then no such indebtedness shall be incurred and no such commissioners or lady assistant can be appointed to be paid by the county.

Fund for National committee.

(2871) § **5**. From the one thousand dollars authorized to be expended, as provided in this act, the county commissioners of each county may forward to the national commission at Chicago the sum of three hundred dollars, to be by each commission expended in the erection of a suitable building for the use of the Territory and its products at such exposition. At the close of the exposition such building or the marerial of which it is composed shall be sold and the proceeds of the sale returned to the various county treasurers in proportion to the amount contributed by the county for the erection thereof: *Provided, however*, That if the Government of the United States shall furnish the place suitable for the exhibition of the products of the Territory, then such building shall not be erected at the cost of the counties.

This act shall be in force and effect from and after the final adjournment of the present session of the Legislative Assembly.

CHAPTER XXXVI.—FEES AND SALARIES.

AN ACT providing for fees to be paid the Secretary of the Territory, and not otherwise provided for.

[Took effect December 19, 1890.

SECTION.

1. Fees allowed Secretary of Territory.
2. Limitation of official compensation.
3. Clerk of district court, fees.
4. Clerk of supreme court, fees.
5. Fees, commission and mileage of sheriff.
6. Fees of probate judge.
7. Same, when fees same as district clerk.
8. Fees of register of deeds.
9. Fees of county clerk.
10. Same, record of fees.
11. Same, quarterly statement.
12. County clerk's salary.
13. Same, how paid.
14. County clerk's quarterly report.
15. County treasurer's fees.
16. Same, record of.
17. Same, quarterly statement,
18. Same, salary.
19. When treasurer's salary paid.
20. Same, failure to make statement.
21. Salary, basis for computation of.
22. Surveyor, fees and per diem.
23. Notaries public, fees of.
24. Oaths administered, fees limited in special cases.
25. Penalty for overcharge.
26. Coroner's mileage, etc.
27. Commissioners of partition, fees of.
28. Appraiser's fees per diem.
29. Justices of the peace, fees of.
30. Fees, mileage, per cent, and per diem of constables,
31. Witnesse's fees, mileage and per diem,
32. Juror's fees.
33. When county to pay fees.
34. Clerk's duties.
35. Same, return to county commissioners.
36. Fees posted.
37. Return of fees on process.
38. Costs advanced, how taxed.
39. Fee bills, against whom taxed.
40. Receipt of fees.
41. Costs in justice courts.
42. Costs on execution, how disbursed.
43. Costs belonging to another, how held and disposed of.
44. No fee for constructive mileage.
45. Folio defined.
46. Per diem and mileage of county commissioners.
47. Fees not collectable, when.
48. Printer's fees for public printing.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Fees allowed Secretary of Territory.

(2872) § **1.** That the secretary of the Territory shall be allowed to charge and receive for services rendered by him, to be paid by the party for whom the same are rendered, the following fees, viz:

For filing articles of incorporation, five dollars; for issuing certificate of incorporation, three dollars; for affixing certificate of the Secretary and the seal of the Territory, one dollar; for each commission issued by the Governor and attested by the Secretary, one dollar; for recording any instrument required to be recorded in the Secretary's office, per folio, ten cents; for copy of any paper or document, to be paid for by the person demanding the same, per each one hundred words, ten cents; for each commission issued to a commissioner of deeds, in a foreign state or territory, five dollars; for such services rendered and not specified in this act, such fees as are allowed for similar services in other cases.

This act shall take effect from and after its passage and approval.

AN ACT Establishing Fees and Salaries of Public Officers.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Limitation of official compensations.

(2873) § **2.** That the officers and persons herein mentioned shall be entitled to receive for their services only the fees and compensations herein allowed and no other except as may be otherwise provided by law.

Clerk of district court, fees.

(2874) § **3.** The clerks of the district court of the counties in this Territory shall receive as their compensation for the service required by law to be performed by he clerks of the district court, the following named fees: For filing each paper, five cents; docketing each action on appearance docket, fifteen cents; docketing action on trial docket, each, ten cents; each entry on appearance docket other than docketing action, five cents; entering every order, motion, rule, plea, report, verdict or arraignment, ten cents; entering judgments not exeeding five folios, forty cents, each additional folio, ten cents; entering satisfaction of judgment, twenty-five cents; each indexing five cents; issuing any writ, except as otherwise provided, twenty-five cents; issuing subpœna, all the names contained in one precipe to be contained in one subpœna, twenty-five cents; issuing any order of attachment, replevin, arrest, execution sale, or order to carry sentence of criminal into execution, fifty cents; issuing commission to take depositions, fifty cents; administering oath in open court, five cents; impanelling and swearing in jury, fifty cents; taking and certifying affidavits. twenty-five cents; approving bond, including justification, fifty cents; docketing judgment, twenty-five cents; taxing costs and making fee bill per folio, ten cents; making any record or copying any paper required to be copied, per folio, seven

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cents: certifying fees of jurors and witnesses to county board, each name, five cents; entering declaration of alien to become a citizen and certified copy of same, one dollar; taking and entering recognizance, fifty cents; making fee bills in state cases, per folio, seven cents; entering indictment in indictment record, fifty cents; certificate and seal, twenty-five cents.

Fees of clerk of Supreme Court.

(2875) § **4.** Clerks of the Supreme Court shall be allowed the same fees for like services as are allowed clerks of the district court.

Fees, commission and mileage of sheriff.

(2876) § **5.** The sheriff of each county shall receive for his services the following fees and none other: Serving and returning any writ, process, order or notice, except as hereinafter provided, for the first person, fifty cents. for each additional person, twenty-five cents; serving warrant and making return thereof, seventy-five cents; making arrest as peace officer, fifty cents; serving order of attachment, arrest or replevin, and returning the same, fifty cents; making levy under execution, fifty cents; appraisement of property, fifty cents; return "no property found", twenty-five cents; return of "not found", each person, five cents; approving and returning undertaking bond or recognizance. fifty cents; advertising property for sale, fifty cents; offering for sale or selling property, fifty cents; taking inventory of personal property, each day, one dollar; sheriff's deed and acknowledged to be paid out of the proceeds of the sale of real estate conveyed, one dollar and fifty cents; summoning tailsmen, each five cents; for every mile actually and necessarily travelled each way in serving or endeavoring to serve any writ, process or order, venire or notice, five cents: *Provided*, No mileage shall be charged where the distance does not exceed one mile. For attending jail when occupied by prisoner or prisoners, one dollar per day; for boarding and lodging each prisoner, forty cents per day exclusive of fuel, lights, furniture and bedding where jail is provided, and sixty cents per day where no jail is provided: *And provided further*, That no mileage shall be taxed or allowed. No person shall be required to pay any mileage unless at the time of making return the sheriff make and file with his return, or as a part thereof, a statement showing the distance actually and necessarily travelled in making service on the first person, who shall be named by him when the writ contains the name of more than one person, and the distance actually and necessarily traveled from the place of making the first service on the second person, who shall be named by him, and so on for each person served, and the distance actually and necessarily travelled in returning, so that the whole route traveled by the sheriff in making service shall fully appear. For each mile actually and necessarily travelled in collecting or endeavoring to collect, or endeavoring to and property to satisfy personal taxes under warrants, ten cents; find the said fees to be paid by the county in the event of a failure to find property with which to satisfy said tax warrants; attending any court of record, ene dollar and fifty cents per day; executing writ of *habeas corpus*, fifty cents; executing order of commitment, twenty-five cents;

ten cents per mile and transportation and board for prisoner under requisition, when made by the Governor; commission for collecting money on sale first one hundred dollars, three per cent, the next four hundred dollars two per cent, the second five hundred dollars one per cent, all over one thousand dollars, one half of one per cent, and one half of the foregoing rates on collections without sale; for posting each notice of election, five cents, and ten cents per mile for each mile actually and necessarily travelled: *Provided*, That no mileage shall be allowed where the distance travelled is less than one mile. Sheriffs may, where jails are insufficient for the safe keeping of prisoners, employ such guards as are actually necessary; for the service of such guard or guards the board of county commissioners shall allow the sheriff a reasonable compensation, to be paid out of the county treasury.

Fees of probate Judge.

(2877) § **6.** The probate judge of each county shall receive for his services the following fees:

Issuing letters testamentary of administration or guardianship, one dollar.

Approving bond, fifty cents.

Issuing any writ not herein provided for, fifty cents.

Issuing subpœna, twenty-five cents.

Probate of will, one dollar.

Entering every motion, order, rule or settlement, approval, disapproval, application, demand or judgment, five [fifty] cents.

Filing each paper, fifty [five] cents.

Certificate and seal fifty cents.

Administering oath, ten cents.

Taking and certifying affidavit, twenty-five cents.

Making entry or abstract of claim, ten cents.

Recording will, inventories, bonds, settlements, reports, or other matter, or copying same, per folio, ten cents.

Examining partial or final settlement, one dollar.

Hearing application on behalf of lunatic or habitual drunkard, one dollar.

Hearing on writ of *habeas corpus* or application for injunction, three dollars.

Hearing application for and granting or refusing order of sale, fifty cents.

Issuing marriage license, one dollar.

Recording marriage license, to be paid when issued, one dollar.

In no case are any of the above fees to be paid by the county.

Same, when fees same as district court.

(2878) § **7.** That whenever the probate judge of any county shall be compelled to perform any services for which no fees are fixed by law, he shall be entitled to receive therefor the same fees as may be by law allowed to district clerks for like services.

Fees of register of deeds.

(2879) § **8.** The register of deeds shall receive the following fees:

For recording deeds, mortgages or other instruments of writing, for the first folio, twenty-five cents.

Each additional folio, ten cents.

Certificate of filing and recording any instrument, ten cents.

Each entry on index, including description of property, five cents.

For copy of each deed or other instrument recorded, per folio, ten cents.

For recording town plats of one hundred lots or less, three dollars.

Each additional hundred lots, one dollar.

Certificate and seal, twenty-five cents.

Filing each paper required to be filed, five cents:

Provided, however, That all fees collected by the register of deeds, in excess of two thousand five hundred dollars annually, shall be paid into the county treasury.

Fees of county clerk.

(2880) § **9**, The county clerk in each county shall charge and collect from the party requiring his services, for the use of the county, the following fees:

For recording reports or other papers other than such as pertain to or are required by law to be recorded by the county, or copies thereof, and for making copies of any such report or record, per folio, seven cents.

Countersigning and entering certificate of redemption, twenty-five cents.

Certificate and seal, when the same is required by law to be made by the county clerk, twenty-five cents.

Taking and certifying affidavit except upon claims against the county, twenty-five cents.

Filing each paper, except such as pertain to county business, five cents.

For granting a certificate to purchasers of school lands, twenty-five cents.

Taking and approving bonds, to be paid by the party making the bond, twenty-five cents.

Issuing license, to be paid by the person receiving the same, one dollar.

Making tax deed, one tract and acknowledgement, one dollar; each additional tract or lot, five cents.

Assignment of tax sale certificate, to be paid by party purchasing, twenty-five cents.

For recording any mark or brand, and giving certificate for same, twenty-five cents.

For recording each certificate of strays, and forwarding description of same as required by law, thirty-five cents.

Same, record of fees.

(2881) § **10.** He shall keep an account of said fees in a book to be provided for that purpose, showing the amount charged and the amount received, from whom and for what purpose, and the date thereof.

The footings for each month shall, at the close thereof, be legibly and correctly entered in said book, opposite the month during which the same have been collected or charged, showing the amount charged, the amount received and the amount remaining due and unpaid.

County clerk's quarterly report.

(2882) § **11.** He shall on the first Monday of January and the first Monday after the first Tuesday of April, and the first Mon-

days of July and October of each year, make out and present to the board of county commissioners a detailed statement of the amount of fees by him received during the preceeding quarter, together with the amount of fees charged, and which are due and unpaid, which report shall be under oath, and the same shall be filed with the register of deeds, and the amount so collected shall be paid into the county treasury every quarter.

County clerk's salary

(2883) § **12.** The county clerks of the several counties of this Territory, shall be allowed by the board of county commissioners of the respective counties, as full compensation for their services the following annual salary: In counties of five thousand inhabitants or less, not to exceed six hundred dollars; in counties of from five thousand to ten thousand inhabitants, not to exceed eight hundred dollars; in counties of from ten thousand to twelve thousand five hundred, not to exceed one thousand dollars; in counties over twelve thousand five hundred, not to exceed one thousand two hundred, payable quarterly. The number of inhabitants shall be determined for the purposes of this act from the last census taken either under the laws of the Territory or of the United States.

Same, how paid.

(2884) § **13.** Said salaries shall be paid out of the county treasury, in quarterly installments upon the order of the county commissioners: *Provided,* That the amount charged by each county clerk as fees herein provided for the preceding quarter, shall be first deducted from said quarterly installment.

Same, quarterly statement.

(2885) § **14.** If any county clerk shall fail to make to the county commissioners the quarterly report under oath, as herein required, he shall forfeit ten dollars for each day he shall negligently fail to do so; and the board of county commissioners shall in no event audit or order to be paid any quarterly installment of the salary as herein provided until such report shall have been made by the county clerk as herein provided, and if any board of county commissioners shall audit and order to be paid any quarterly or other installment of such salary, until the report be made and sworn to by the county clerk as herein provided, each member of said board shall be subject to a fine of one hundred dollars, to be recovered for the use of the common school fund, as in other cases.

County treasurer's fees.

(2886) § **15.** The county treasurer in each county shall charge the party requiring his services for the use of the county the following fees: For issuing warrants for the collection of taxes on personal property, twenty-five cents; for certificate of sale of lands for taxes, ten cents; for certificates of redemption. twenty-five cents; for making out list of land for the printer, or to be posted, five cents for each tract advertised.

Same, record of

(2887) § **16.** He shall keep an account of said fees in a book to be provided for that purpose, showing the amount charged and the amount received from whom and for what purpose, and the date thereof. The footings for each month shall at the close thereof, be legibly and correctly entered in said book, opposite the month during which the same have been collected or charged,

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showing the amount charged, the amount received and the amount remaining undue and unpaid.

Same, quarterly statement.

(2888) § **17.** He shall on the first Monday of January and the first Monday after the first Tuesday of April and the first Mondays of July and October of each year, make out and present to the board of county commissioners a detailed statement of the amount of fees by him received during the preceding quarter, together with the amount of fees charged and which are due and unpaid; which report shall be under oath, and the same shall be filed with the county clerk.

Same, salary.

(2889) § **18.** The county treasurers of the several counties of this Territory, shall be allowed by the board of county commissioners of their respective counties as full compensation for their services, the following annual salary:

In counties having a population of five thousand or less not to exceed six hundred dollars; in counties having a population of five thousand and not over ten thousand inhabitants, not to exceed eight hundred dollars; in counties containing a population of over ten thousand inhabitants, not to exceed one thousand dollars, payable quarterly.

When treasurer's salary paid.

(2890) § **19.** Said salaries shall be paid out of the county treasury in quarterly installments, upon the order of the county commissioners: *Provided*, That the amount collected by each county treasurer as fees herein provided for the preceding quarter shall be first deducted from said quarterly installments.

Same, failure to make statement.

(2891) § **20.** If any county treasurer shall fail to make to the county commissioners a quarterly report under oath, as herein required, he shall forfeit ten dollars for each day he shall wilfully fail so to do, and the board of county commissioners shall in no event audit or order to be paid any quarterly installment of the salary as herein provided, until such report shall have been made by the county treasurer, as herein provided; and if any board of county commissioners shall audit or order to be paid any quarterly or other installment of such salary, until the report be made and sworn to by the county treasurer as herein provided, each member of said board voting for such allowance shall be subject to a fine of one hundred dollars, to be recovered for the support of common schools of the county, as in other cases.

Salary, basis for computation of.

(2892) § **21.** For the purpose of fixing the amount to be paid to county clerks and county treasurer, the board of county commissioners shall adopt as a basis for that purpose the number of inhabitants in their respective counties, as shown by the returns of the assessors made last preceding the commencement of the terms of office of such treasurer: *Provided*, The number of inhabitants of any county previous to one thousand eight hundred and ninety-two, shall be determined by the last United States census.

Surveyor, fees per diem.

(2893) § **22.** The county surveyor shall receive three dollars per day for the time actually and necessarily employed in going to and making a survey and returning to his office. For copy of plat of land or certificate of survey, two dollars; making out complete report in all surveys made by authority for county or township, two dollars; for recording surveys, per folio, twenty cents.

Notaries public, fees of.

(2894) § **23.** Notaries public shall receive for protest and record of the same, twenty-five cents; for each notice of protest, ten cents; for certificate and seal, twenty-five cents; for all other services the same fees as are allowed to the clerk of the district court for like services.

Oaths administered; fees limited in special cases.

(2895) § **24.** That no judge or clerk of any court, county clerk, notary public, justice of the peace, or any other person authorized to administer oaths shall be allowed to charge any discharged soldier or seaman, or widow, orphan or legal representative thereof, more than fifteen cents for administering any oath, or giving official certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths, and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor more than fifteen cents for all services rendered in perfecting any one voucher.

Penalty for over-charge.

(2896) § **25.** Any such officer who may accept more than fifteen cents for any such services shall be deemed guilty of a misdemeanor, and fined in any sum not less than ten dollars nor more than twenty-five dollars.

Coroner's fees mileage, etc,

(2897) § **26.** The coroner of each county, or any person lawfully acting as coroner, shall receive for holding an inquest, two dollars per day for each day actually and necessarily employed; for all services performed by him in holding such inquest the same fees as justice of the peace for like services in criminal cases; for performing the duties of sheriff the same fees as sheriff; and for every mile necessarily and actually travelled in discharge of his official duties, five cents.

Commissioners of partition, fees of

(2898) § **27.** Each commissioner for the partition of real estate shall receive for each day two dollars, travelling fees the same as are allowed to sheriffs; but this section shall not limit the right of parties to agree upon a higher rate of compensation for the commissioners in any case.

Appraiser's fees and per diem.

(2899) § **28.** Each appraiser in civil actions shall receive one dollar for the first days services and travelling fees the same as are allowed to sheriffs and when required to serve more than one day, in any case, two dollars for each day.

Justices of the peace, fees of.

(2900) § **29.** Justices of the peace shall receive the following fees: Making any entry upon the justices docket, required by law and not otherwise provided ten cents; entering any order of dismissal or adjournment or continuance of summons for jury, or other order of two folios or less, twenty-five cents, each additional folio, ten cents, all transcripts and copies, per folio ten cents; certificates, twenty-five cents; acknowledgement of deed or other instrument twenty-five cents; filing paper five cents; approving bond or undertaking, twenty-five cents; administering each oath, ten cents; jury trial, each day or part thereof, fifty cents; transmitting papers, twenty-five cents; entering any judgment or satisfaction, or transfer of judgment, of two folios or less, twenty-five cents; issuing any writ, process, or order, twenty-five cents; rendering judgment, twenty-five cents; all names included in one precipe shall be in one subpœna, unless otherwise ordered; performing duties of coroner, same fees as cor-

oner; marrying and making returns three dollars, to be paid by the party applying for such service: *Provided*, That in all cases where any person shall be arrested, charged with felony, and the court shall decide that there were not reasonable grounds for such arrest, and when any person charged with an offense less than a felony, shall be discharged for waht of sufficient evidence to convict, or bind over, the prosecuting witness shall be liable for costs.

Fees, mileage per cent and per diem of constables.

(2901) § **30.** The constable shall receive the following fees:

For serving every writ, order, process or notice not herein otherwise provided for, when the same shall contain the name of but one person, twenty-five cents.

For each additional person, fifteen cents.

Serving a subpoena on witness, twenty-five cents.

For each additional witness in the same case, fifteen cents.

Appraisal and return, fifty cents.

Taking and returning a bond or undertaking, twenty-five cents.

Summoning a jury, fifty cents.

Attending on a jury, fifty cents.

For each mile necessarily and actually travelled in the service and return of any writ, process, order or notice, five cents.

No constructive mileage shall be allowed.

For committing to prison, twenty-five cents.

Bringing prisoner into court, by order, twenty-five cents.

Attending criminal examination, first day, one dollar.

Each subsequent day, two dollars.

On all moneys collected on execution, four per cent.

For copy of summons or notice left at a place of abode fifteen cents.

For keeping property taken on replevin or attachment, a reasonable compensation to be allowed by the court.

(2902) § **31.** Witnesses shall receive the following fees:

Witnesses fees, mileage and per diem,

For attending before any court, or before any judge, or commissioner, per day, one dollar and fifty cents; for attending before any justice of the peace, per day, fifty cents; for each mile necessarily and actually travelled in going to and returning from the place of attendance, five cents: *Provided*, That no mileage shall be allowed where the distance is less than two miles. No witness shall receive *per diem* or mileage in more than one case covering the same period of time, or the same travel; and each witness shall be required to make oath that the fees claimed have not been claimed or received in any other case; and no juror shall receive pay as witness while serving as such juror.

Jurors' fees

(2903) § **32.** Jurors shall be paid the following fees out of the county treasury: For attending before any court of record, for each days attendance, two dollars; for each mile necessarily travelled in going to and returning from the place of attendance, ten cents; each juror or witness sworn before any coroner or justice of the peace on any inquest taken by him, one dollar; each juror, for attending in any justice court, to be advanced by the party demanding the same and at the time of such demand,

and taxed to the party adjudged to pay the costs, fifty cents; and fifty cents for each additional day they shall attend on the same.

When county to pay fees.

(2904) § **33.** In all cases where the fees prescribed by this act, in criminal cases, for the sheriff, probate judge, clerk, constables, justices of the peace, witnesses for the Territory and jurors, are not paid by the defendant or prosecuting witness, they shall be paid by the county in which the criminal prosecution was instituted: *Provided*, That no such fees shall be paid by the board of county commissioners until the sheriff, constable or justice of the peace shall have filed his affidavit that said fees cannot be collected from any other source. *And provided further*, That the total amount of criminal fees allowed to the sheriff, probate judge, and county clerk, shall in no case when added to the fees collected by them make their annual salary exceed the following amounts; sheriffs in counties of five thousand inhabitants or less, one thousand dollars; in counties of from five thousand to ten thousand inhabitants, two thousand dollars; in counties of from ten thousand to twenty thousand inhabitants, three thousand dollars; probate judge, in counties of five thousand or less, six hundred dollars; in counties of from five thousand to ten thousand inhabitants, nine hundred dollars; in counties of from ten thousand to twenty thousand inhabitants twelve hundred and fifty dollars; county clerk, the same as provided in section eleven of this act. *And provided further*, That annual settlement shall be made with the county officers, named in this act, and that allowance of criminal fees shall be made by the county commissioners upon sworn statement submitted with said annual settlements and that all fees collected by said officers in excess of the amounts named in this act, as their annual salary shall be paid into the county treasury.

Clerk's duties.

(2905) § **34.** The clerk of the district court shall keep a record of the attendance of jurors at each term, and of the attendance and fees of witness when claimed during the term.

Same, return to county commissioners

(2906) § **35.** Within ten days after the close of each term of a court of record, the clerk thereof shall return to the board of county commissioners a statement of the attendance of the jurors at such term, and their mileage as taken by him, together with a statement of the attendance and mileage of witnesses in all criminal cases claimed, and for which the county is liable.

Fees posted.

(2907) § **36.** Each officer herein named shall cause a list of fees allowed by law to be charged by him to be posted in his office, in some conspicuous place, under penalty of three dollars, for each day he shall neglect so to do,

Return of fees on process

(2908) § **37.** No officer serving any process shall be entitled to any fees for the same, unless he return, on such process, the amount of his fees and the items thereof.

Costs advanced, how taxed.

(2909) § **38.** All fees and sums paid by either party for fees of witnesses and other necessary expenses, in any civil action or proceeding, shall be proved by the affidavit of the party, or of some person knowing the same to have been paid; and all such fees shall be taxed and collected from the party ordered or adjudged to pay the costs.

Fee bills, against whom taxed.

(2910) § **39.** Any person liable for any costs or fees, shall be

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entitled to receive on demand, a certified bill of the same, in which the items of service, and the charge therefor, shall be specially stated.

Receipt for fees.

(2911) § **40.** Every officer charging fees shall, if required by the person paying them, give him a receipt therefor, setting forth the items and the date of each.

Cost in justice's court.

(2912) § **41.** It shall be the duty of every justice of the peace to tax the costs of every criminal examination on trial before him, and certify the same to the board of county commissioners, in all cases in which the county is liable.

Costs on execution, how disbursed.

(2913) § **42.** It shall be the duty of the sheriff or other officer collecting costs on execution, in this Territory, after retaining his own fees, to pay the residue of such costs collected to the clerk of the court, from which the execution issued, or to the justice, and take a receipt therefor.

Costs belonging to another, how he d and disposed of

(2914) § **43.** It shall be the duty of the clerk of the court or justice, receiving any costs belonging to any other person, to hold the same, subject to the order of the person entitled thereto, and to pay the same over, on request; and if such fees shall not be called for within one year after having been received, the officer shall pay the same into the county treasury, and take a receipt therefor.

No fee for constructive mileage.

(2915) § **44.** No officer shall receive any fees for constructive services or mileage in any case: *Provided,* That any officer who shall charge or receive any greater fee than is herein provided for, shall be deemed guilty of a misdemeanor, and shall upon conviction be fined in any sum not to exceed twenty-five dollars for each offense.

Folio defined.

(2916) § **45.** A folio shall consist of one hundred words, and two figures shall be counted as one word.

Per diem and mileage of county commssstoners

(2917) § **46.** The county commissioners shall be allowed for time actually and necessirly employed, a *per diem* of three dollars each, and five cents per mile for each mile necessarily travelled in discharge of their official duties.

Fees collectible when.

(2918) § **47.** No fees allowed by this act shall be due or demanded until the services for which such fees are chargeable shall have been performed.

This act shall take effect and be in force from and after the date of the final adjournment of the first session of this Legislative Assembly.

AN ACT to Regulate Printers' Fees for Public printing.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Printer's fees.

(2919) § **48.** In all cases where publication of legal notices is required or allowed by law, the person or officer desiring such publication shall be required to pay seventy-five cents per square of ten lines of nonpareil type for the first insertion; each subsequent insertion, for each square of ten lines, fifty cents. Each

legal advertisement under ten lines shall be deemed a square and each fractional part of a square shall be counted as a full square. For publishing lists of lands upon which taxes are delinquent, each description, twenty cents; for publishing lists of town lots on which taxes are delinquent, each description, ten cents.

This act shall be in force from and after the final adjournment of the present session of the Legislative Assembly.

CHAPTER XXXVII.—FIRES.

AN ACT to regulate prairie fires.

[Took effect December 11, 1890.]

SECTION.
1. Misdemeanor, punishment.
2. Notice and protection prior to burning.
3. Liability under preceding section.
4. Control of fire set out.
5. Liability under preceding section.
6. Destruction of woods, marsh, or prairie.
7. Destruction of improvements, etc.
8. Title not necessary to a recovery.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

(2920) § **1.** If any person shall set or cause to be set on fire any woods, marsh or prairie, or any grass or stubble lands except as hereinafter provided, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined a sum not more than five hundred dollars nor less than ten dollars, or imprisonment in the county jail for a period not longer than six months, one or both at the discretion of the court, and shall also be liable in a civil action to any person or persons damaged by such fire to the amount of such damages. Misdemeanor, punishment.

(2921) § **2.** For the purpose of destroying any grass or stubble that may be on any piece of land at the time any person or persons commence to break or plow the same, it shall be lawful for such person or persons to set the same on fire, after having first given at least twelve hours notice to all persons living on adjacent lands of his [their] intention to set out such fire, giving time when and the place where the first is to be set: *Provided*, That at the time of setting such grass or stubble on fire there shall be a strip of land well plowed or burned over at least twenty feet in width, completely encompassing the place where such fire is set. Notice of burning.

(2922) § **3.** If any fire, set as provided in section two, should by accident and without any fault or neglect of the person or persons setting the same, get beyond his or their control, such person or persons shall be liable as in section one for all damages done by said fire, but not otherwise. But if such fire should by negligence, carelessness or be intentionally permitted to spread beyond the bounds of such strip of land mentioned in section two, then the person or persons setting such fire shall be liable both civilly and criminally as provided in section one. Same, violation

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Control of fire.

(2923) § **4.** Fire set under the provisions of section two, shall not be allowed to spread beyond the control of such person or persons setting the same and shall be subdued and extinguished the same day on which it is set.

Liability under preceding section.

(2924) § **5.** Any person or persons violating the provisions of section four shall be liable in a civil action to any person or persons damaged by such fire, to the amount of such damage; and in case any person or persons shall negligently, carelessly, wilfully, maliciously or intentionally violate any of the provisions of section four, such person or persons shall be liable both civilly and criminally the same as though they had violated the provisions of section one of this act.

Destruction of plant life.

(2925) § **6.** If any person or persons shall wilfully, negligently or carelessly set or cause to be set on fire any woods, marsh or prairie in the Territory, or if any person or persons having made any camp or other fire, shall leave the said fire without having thoroughly extinguished the same, so that the fire shall spread and burn any wood, marsh or prairie, the person or persons guilty of setting or causing to be set such fire, or leaving such camp or other fire without having thoroughly extinguished the same, so that the fire shall spread therefrom, shall be deemed guilty of a misdemeanar, and upon conviction thereof, shall be fined in any sum not to exceed two hundred dollars, or imprisoned in the county jail not more than one year, or by both such fine and imprisonment in the discretion of the court, and shall also be liable in a civil action to any person, [or] persons or corporation damaged by such fire to the amount of such damage.

Destruction of improvements.

(2926) § **7.** If the ranch, buildings, improvements, fencings, timber, marsh or other property of any person, persons, or corporation shall be injured or destroyed by any such fire as described in section six, the person or persons who shall cause or allow the same as therein provided, shall be responsible to the person, persons, or corporation injured thereby for all damage or injury caused or sustained by reason of such fire, If the cattle ranch or improvements of any person, persons or corporation shall be injured or destroyed by any such fire as described in section six, or if the hay upon any such ranch, or the grass growing thereon, shall be injured by any such fire as aforesaid, the person or persons who shall cause or allow the same as herein provided, shall be responsible to the person, person or corporation owning or claiming the same and injured thereby, for all damage or injury caused or sustained by reason of any such fire.

Title and recovery.

(2927) § **8.** In any action instituted in any court to recover damages under the provisions of this act, it shall not be necessary for any person, persons or corporation injured by any such fire to allege in their pleadings, or prove on trial of such action, title to the real property over which such fire has spread, but it shall be sufficient in any such action to allege and prove that the person, persons or corporation so injured was or were in the occupancy or possession of any such ranch, buildings, improvements, fencing, timber, marsh or other property, claiming the right to and occupying with cattle any such cattle range, it being the purpose and inten-

tion of this act to protect the possession as aforesaid of any person, persons or corporation whether such person, persons or corporation have title to the land claimed or occupied by such person, persons or corporation or not. Any railroad company operating any line in this Territory shall be liable for all damages sustained by fire originating from operating their road.

This act shall take effect and be in force from and after the date of its approval.

CHAPTER XXXVIII.—GAME.

AN ACT for the protection of game and fish.

[Took effect October 28, 1890.]

SECTION.
1. Protected and unprotected birds.
2. Deer and antelope, when lawful to kill, sell, etc.
3. Immediate use as food.
4. Hunting and fishing without land owner's consent penalty.
5. Officers and others required to prefer charges.
6. Exporting prohibited.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Protected and unprotected birds.

(2928) § **1.** No person shall kill, ensnare, net or trap within this Territory any prairie chicken, quail, wild turkey, plover, dove, wren, martin, swallow, robin, turkey-buzzard, or other insectivorous birds, except that wild turkey, quail, partridge prairie chicken, or grouse may be shot from September 1st to December 31st of each year; and if at any time any person shall be found in possession of any quail, partridge, prairie chicken or grouse, other than within the date above mentioned, or any other fowls or birds mentioned in this section, it shall be *prima facie* evidence that the same was killed, netted, snared or trapped by such person in violation of this act. Any person who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars, with costs of suit, and shall be prosecuted, and said fines shall be collected as provided in the criminal law of the Territory of Oklahoma in cases of misdemeanor. Such fines shall be paid to the school fund of the county in which the said fine was imposed: *Provided*, That this bill shall not apply to the shooting and killing of hawks and birds of the falcon family that live by preying on other fowls.

Deer and antelope.

(2929) § **2.** No person shall kill, wound, shoot or hunt any deer, fawn or antelope within his Territory between the first day of February and the first day of November in each and every year, and during such time no person or persons shall offer for sale or expose and sell, any meat or parts of any antelope, deer, fawn, doe or buck, and any person or persons found in possession of any meat or any parts of any of the game above mentioned during said time shall be deemed guilty of the violation of the provisions of this section, and such possession shall be evidence of his having wan-

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tonly killed and destroyed said animal. Any person or persons found guilty of violating the provisions of this section, and upon conviction of such violation shall be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than ten days nor more than one hundred days for the first offense, and for each subsequent offense shall be both fined and imprisoned to the full extent provided in this section. Any person violating this section may be arrested and tried before any or the nearest justice of the peace in the township, the same as for any other misdemeanor, and in case the fine and costs be not paid, the same shall be collected in the manner provided by the criminal law of the Territory of Oklahoma in cases of misdemeanor. The fine collected under the provisions of this section shall go to the school fund of the county in which such fines were imposed.

Immediate use as food.

(2930) § **3.** It shall be unlawful for any person or persons, at any other time than that specified in the preceding sections to kill, destroy or have in possession any game named in the foregoing sections, for any purpose or under any pretext whatsoever, except for food, and then only when actually necessary for immediate use and for the reasonble necessities of the person killing the same.

Owner's consent.

(2931) § **4.** It shall be unlawful for any person or persons to kill, ensnare, net or trap on the premises of any other person or persons, any deer, fawn, doe or antelope or any game or fish whatsoever, of any kind, at any time without the consent of the proprietor or owner of said premises or lands, or enter said premises or lands with a gun, net, snare, trap or fishing tackles for the purpose of hunting, ensnaring, fishing or entrapping without the consent of tbe owner or manager of said premises. Any one violating the provisions of this section shall be subject to a fine not to exceed fifty dollars for each and every such violation, said fine shall be collected and applied (and distributed) as provided in section two of this act.

Who to prefer charges.

(2932) § **5.** For the more certain detection and punishment of violators of this act, it is made the duty of all county and township officers and any other persons, whenever a violation of the provisions of this act is brought to their knowledge, to file an affidavit before a justice of the peace, charging the person or persons with the offense committed, and said justice of the peace being first satisfied on examination of the affidavit, that the person or persons accused had committed said offense, shall issue a warrant for the arrest of said person to be tried for misdemeanor as provided by the criminal law of the Territory of Oklahoma.

Exporting prohibited

(2933) § **6.** No person shall kill, ensnare, net or trap any quail, prairie chicken, turkey or any deer, fawn, antelope or other game within this Territory to export to any state or territory. And any person or persons who shall export or ship any game killed or taken in Oklahoma Territory, out of the Territory shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in section two of this act.

This act shall be in force from and after the date of its approval.

CHAPTER XXXIX.—GUARANTY.

ARTICLE.
1 Guaranty in general.
2. Suretyship.

ARTICLE 1.—GUARANTY IN GENERAL.

SECTION.
1 Guaranty defined.
2. Consent of principal.
3 Consideration of the guaranty.
4. Guaranty must be in writing.
5. When need not be in writing.
6 Acceptance of guaranty.
7 Implied guaranty.
8. Guaranty of solvency.
9. Failure to take proceedings on principal debt.
10. Insolvency presumed, when.
11. Guaranty construed, how.
12 Guarantor liable in default of principal.
13 Guaranty of conditional obligation.
SECTION
14. Limitation of obligation.
15. Guarantor not liable on unlawful contract.
16. Continuing guaranty.
17. Revocation of continuing guaranty.
18. Exoneration of guarantor.
19. Void promise of creditor.
20. Rescission of agreement altering liability.
21. Part performance releases proportionately.
22. Delay does not discharge guarantor.
23. Guarantor has been indemnified.
24. Discharge of principal by act of law.

(2934) § **1.** A guaranty is a promise to answer for the debt, default or miscarriage of another person. Guaranty defined.

(2935) § **2.** A person may become guarantor even without the knowledge or consent of the principal. May become guarantor without consent of principal.

(2936) § **3.** Where a guaranty in entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms, with that obligation, a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation. Consideration of the guaranty.

(2937) § **4.** Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration, A guaranty must be in writing.

(2938) § **5.** A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing: A guaranty need not be in writing in certain cases.

First. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise.

Second. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made his surety.

Third. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or

his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person.

Fourth. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale.

Fifth. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

Acceptance of guaranty necessary.

(2939) § **6.** A mere offer to guaranty is not binding, until notice of its acceptance is commnicated by the guarantee to the guarantor: but an absolute guaranty is binding upon the guarantor without notice of acceptance.

Implied guaranty.

(2940) § **7.** In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common, in similar contracts, at the place where the principal contract is to be performed.

Guaranty of solvency.

(2941) § **8.** A guaranty to the effect that an obligation is good, or collectable, imports that the debtor is solvent, and that the demand is collectable by the usual legal proceedings, if taken with reasonable diligence.

Guaranty not discharged by failure to take proceedings on principal debt.

(2942) § **9.** A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

Insolvency will be presumed, when.

(2943) § **10.** In the cases mentioned in section 2941 the removal of the principal from the Territory leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal, in its effect upon the rights and obligations of the guarantor.

Guaranty construed, how.

(2944) § **11.** A guaranty is to be deemed unconditional, unless its terms import some condition precedent to the liability of the guarantor.

Guarantor liable in default of principal

(2945) § **12.** A guarantor of payment or performance is liable to the guarantee immediatly upon the default of the principal, and without demand or notice,

Guaranty of conditional obligation.

(2946) § **13.** Where one guarantys a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

Limitation of obligation.

(2947) § **14.** The obligation of a guarantor must be neither larger in amount, nor inother respects more burden some than that of the principal; and if, in its terms, it exceeds it, it is reducible in proportion to the principal obligation.

Guarantor not liable in unlawful contract.

(2948) § **15.** A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere

personal disability of the principal, though the disability be such as to make the contract void against the principal.

Continuing guaranty.

(2949) § **16.** A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

Revocation of continuing guaranty.

(2950) § **17.** A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transaction which he does not renounce.

Exoneration of guarantor.

(2951) § **18.** A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

Void promise of creditor.

(2952) § **19.** A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section.

Rescission of alteration of agreement does not revive guaranty

(2953) § **20.** The recission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonorated by such agreement.

Part performance releases guarantor proportionately.

(2954) § **21.** The acceptance, by a creditor, of any thing in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of a principal, but does not otherwise affect it.

Delay does not discharge guarantor.

(2955) § **22.** Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

Where guarantor has been indemnified.

(2956) § **23.** A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

Discharge of principal by act af law does not release guarantor.

(2957) § **24.** A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

ARTICLE 2.—SURETYSHIP.

SECTION.

1. Surety defined.
2 Surety who appears as principal.
3. Liability as surety.
4. Rules of interpretation.
5. Judgment does not release.
6 Exoneration of surety.
7 What exonerates surety.
8 Surety has rights of guarantors.
9 May require proceedings against principal.
10 May compel principal to perform obligation.
11. Principal bound to reimburse surety.
12 Surety may enforce remedies against principal.

SECTION.

13. Entitled to all secureties.
14. Property of principal first applied.
15. Creditors entitled to securities.
16. Letter of credit defined.
17. May be addressed to several.
18. Writer liable, when.
19. Classes of letters of credit.
20. General letter of credit.
21. Successive credits.
22. Is a continuing guaranty.
23. Notice not necessary.
24. Credit given must agree with letter

Chap. 39.

Suretv defined.

(2958) § **1.** A surety is one who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

Surety, who appears as principal.

(2959) § **2.** One who appears to be a principal, whether by the terms of a written instrument, or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

Liability of surety.

(2960) § **3.** A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

Rules of interpretation.

(2961) § **4.** In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

Judgment does not release surety.

(2962) § **5.** Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

Exoneration of surety.

(2963) § **6.** Performance of the principal obligation, or an offer of such performance duly made as provided in this chapter exonerates a surety.

What exonerates surety.

(2964) § **7.** A surety is exonerated:

First. In like manner with a guarantor.

Second. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,

Third. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

Surety has right of guarantor.

(2965) § **8.** A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

May require proceedings against principal.

(2966) § **9.** A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, aud which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

May compel principal to perform obligation.

(2967) § **10.** A surety may compel his principal to perform the obligations when due.

Principal bound to reimburse surety.

(2968) § **11.** If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefitted by this act, except as prescribed by the next section.

Surety's right against principal.

(2969) § **12.** A surety, upon satisfying the obligations of the principal, is entitled to enforce every remedy which the creditor then has against the principal, to the extent of reimbursing what he has expended; and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

Surety may enforce against principal every remedy that creditor had.

(2970) § **13.** A surety is entitled to the benefit of every security for the performance of the principal obligation, held by the creditor; or by a co-surety, at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

Property of principal first applied.

(2971) § **14.** Whenever property of a surety is hypothecated with the property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

Creditor entitled to all securities.

(2972) § **15.** A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

Letter of credit defined.

(2973) § **16.** A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

May be addressed to several.

(2974) § **17.** A letter of credit may be addressed to several persons in succession.

Writer liable, when.

(2975) § **18.** The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

Classes of letters of credit.

(2976) § **19.** A letter of credit is either general or special. When the request for credit, in a letter, is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

General letters of credit.

(2977) § **20.** A general letter of credit gives any person to whom it may be shown, authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

Successive credits.

(2978) § **21.** Several persons may successively give credit upon a general letter.

Letter of credit is a continuing guaranty.

(2979) § **22.** If the parties to a letter of credit appear by its terms to contemplate a course of future dealing with between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty.

Notice not necessary unless provided.

(2980) § **23.** The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

Credit given must agree with letter.

(2981) § **24.** If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

CHAPTER XL.—HUSBAND AND WIFE.

SECTION.
1. Relations of husband and wife.
2. Husband is head of the family.
3. Duty to support.
4. Separate property.
5. Contracts.
6. Relations cannot be altered by contract.
7. Separation.
8. Real property; conveyance by wife; wife's title to personal property.
9. Separate and mutual rights of husband and wife.
10. Husband bound for necessaries.
11. Abandonment and separation.
12. Sale and incumbrance of property.
13. Contracts binding on both.
14. Order of court may be set aside, when.
15. Rights of married women.

Relations of husband and wife

(2982) § **1.** Husband and wife contract towards each other obligations of mutual respect, fidelity and support.

Huband head of family.

(2983) § **2.** The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto.

Duty to support.

(2984) § **3.** The husband must support himself and his wife out of his property or by his labor. The wife must support the husband, when he has not deserted her, out of her separate property when he has no separate property and he is unable from infirmity to support himself.

Separate property.

(2985) § **4.** Except as mentioned in section 2984 neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

Contracts.

(2986) § **5.** Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might, if unmarried, subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other as defined by the title on trusts.

Relations cannot be altered by contract.

(2987) § **6.** A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree in writing to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

Separation.

(2988) § **7.** The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

Real property held by husband and wife, wife's conveyance; wife's title to personal property.

(2989) § **8.** A husband and wife may hold real or personal property together, as joint tenants, or tenants in common. The wife may, without the consent of her husband, convey her separate property. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner provided by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the register of deeds of the county or subdivision in which the parties reside. The filing of the inventory in the register's office is notice and *prima facie* evidence of the title of the wife.

(2990) § **9.** Neither husband nor wife, as such, is answerable for the acts of the other.

Separate and mutual rights of husband and wife.

Second. The earnings of the wife are not liable for the debts of the husband, and the earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

Third. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

Fourth. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

Fifth. No estate is allowed the husband as tenant by courtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

Husband bound for necessaries.

(2991) § **10.** If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support and recover the reasonable value thereof from the husband.

Abandonment; separation.

(2992) § **11.** A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement.

Sale and incumbrance of property.

(2993) § **12.** In case the husband or wife abandons the other and removes from the Territory, and is absent therefrom for one year, without providing for the maintenance and support of his or her family, or is sentenced to imprisonment either in the county jail or Territorial penitentiary for the period of one year or more, the district court of the county or judicial subdivision where the husband or wife so abandoned or not imprisoned resides, may, on application by affidavit of such husband or wife, setting forth fully the facts, supported by such other testimony as the court may deem necessary, authorize him or her to manage, control, sell or incumber the property of the said husband or wife for the support and maintenance of the family, and for the purpose of paying debts contracted prior to such abandonment or imprisonment. Notice of such proceedings shall be given the opposite party, and shall be served as summons are served in ordinary actions.

Contracts made binding on both.

(2994) § **13.** All contracts, sales or incumbrances made by either husband or wife by virtue of the power contemplated and granted by order of the court as provided in the preceding section, shall be binding on both, and during such absence or imprisonment the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable, and execution may be levied or attachment issued thereon according to statute. No suit or proceedings shall abate or be in any wise affected by the return or release of the person confined, but he or she may be permitted to prosecute or defend jointly with the other.

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Order of court may be set aside, when

(2995) § **14**. The husband or wife affected by the proceedings contemplated in the two preceding sections, may have the order or decree of the court set aside or annulled by affidavit of such party, setting forth fully the facts and supported by such other testimony as the court shall deem proper. Notice of such proceedings to set aside and annul such order must be given the person in whose favor the same was granted, and shall be served as summons are served in ordinary actions. The setting aside of such decree or order shall in no wise affect any act done thereunder.

Rights of married women.

(2996) § **15**. From and after the passage of this act, woman shall retain the same legal existence and legal personality after marriage as before marriage, and shall receive the same protection of all her rights as a woman, which her husband does as a man; and for any injury sustained to her reputation, person, property, character or any natural right, she shall have the same right to appeal in her own name alone to the courts of law or equity for redress and protection that her husband has to appeal in his own name alone: *Provided*, That this act shall not confer upon the wife a right to vote or hold office, except as is otherwise provided by law.

CHAPTER XLI.—ILLEGITIMATE CHILDREN.

AN ACT to Provide for the Care and Custody of Illegitimate Children.

[Took effect December. 25 1890]

SECTION.
1. Bastardy, jurisdiction.
2. Arrest of person charged.
3. Filing of complaint a lien on property of defendant.
4. Attachment on complaint may issue.
5. Duty of county attorney.
6. Trial of issue.
7. When jury demanded.
8. Penalty.
9. Powers of judge.
10. Appeals taken, how.
11. Duties of county commissioners.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Bastardy, jurisdiction.

(2997) § **1**. Whenever any woman residing in any county of this Territory is delivered of a bastard child, or is pregnant with a child which if born alive will be a bastard, complaint may be made in writing duly verified, by any person to the probate court of the county where such woman resides, stating that fact and charging the proper person with being the father thereof. The proceeding shall be entitled in the name of the Territory against the accused as defendant.

Arrest of party charged.

(2998) § **2**. Upon the filing of such complaint the probate judge shall issue his warrant for the arrest of the accused, requiring that he be forthwith brought before such court for trial.

Filing charge, lien.

(2999) § **3**. From the time of the filing of such complaint a lien shall be created upon the real property of the accused in the county where the action is pending, for the payment of any money and the performance of any order adjudged by the proper court.

Attachments on complaint may issue.

(3000) § **4**. The judge may also issue an attachment on such complaint without bond, which attachment shall specify the amount in value of property to be seized under the attachment. Such attachment may be revoked at any time by the court on such terms as the court may prescribe.

County attorney, duties.

(3001) § **5**. It is hereby made the duty of the county attorney of the proper county to appear and prosecute all actions brought under this act.

Trial of issue.

(3002) § **6**. Upon the defendant being brought before the court if he deny the truth of the complaint, the issue to be tried shall be "guilty" or "not guilty" and shall be tried summarily before the court, unless the defendant demand a trial by jury.

When jury demanded.

(3003) § **7**. If a jury be demanded the case shall be set for trial at the next term of court, and in the meantime the defendant may be admitted to bail for his appearance at that time, upon his executing a recognizance in a sum fixed by the court, conditioned that he will appear at the time to which such action may be continued and pay any sum which may be adjudged against him and in all respects abide and perform the orders of the court. Upon the execution and approval of such recognizance the defendant shall be discharged.

Penalty.

(3004) § **8**. If the accused be found guilty, he shall be charged with the maintenance of the child in such sum or sums, and in such manner as the court shall direct, and with the costs of suit and execution may issue, immediately, and afterwards from time to time for the collection of any sum or sums ordered to be paid, and in addition thereto the court shall require the defendant to secure the performance of the order of the court, in such manner as the court shall direct.

Powers of judge

(3005) § **9**. The court may at any time, enlarge, diminish or vacate any order or judgment in proceedings under this act on such notice to the defendant and county attorney as the court may prescribe.

Appeals, how taken.

(3006) § **10**. Appeals may be taken in cases brought under the provisions of this act in the same manner and with like effect as in other actions in the probate court.

Duties of county commissioners.

(3007) § **11**. The boards of county commissioners of the several counties of this Territory are hereby required to cause proceedings under this act to be brought in all cases where any bastard child or its mother is liable to become a charge upon the county.

This act shall take effect and be in force upon the adjournment of the present session of this Legislative Assembly.

CHAPTER XLII.—INSANE.

AN ACT Providing for the Care of the Insane.

[Took effect December 20, 1890.]

SECTION.
1. Contract for care.
2. Same, how executed.
3. Patients, examination and confinement.
4. Governor and Auditor, when examiners.
5. Expenses, how met.
6 Commissioners of insanity, appointed how.
7. Oath of commissioners; organization and meetings.
8. Duties of chairman; books to be kept; notices.
9 Duties and powers of commissioners.
10. Application for admission to hospital.
11. Investigation by the commissioners.
12. How patient sent to hospital.
13. Asylum insufficient; disposition of patients.
14. Insane persons cared for by the county.
SECTION.
15. Proper care provided by commissioners.
16. Insane persons not restrained of liberty, except how.
17. Cruelty to insane, penalty.
18. Transfer to hospital.
19. Questions answered on application for admission to hospital.
20. Proceedings for release of patients alleged to be insane.
21. Same, not repeated oftener than once in six months.
22. Insane persons entitled to *habeas corpus*.
23. Salaries and fees, how and by whom paid.
24. Neglect of duty by officer or other person, penalty.
25. Terms "insane" and "idiotic" defined.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

Contract for care.

(3008) § **1.** The Governor of the Territory of Oklahoma be and he is hereby authorized to contract with any territory or state in the United States, or with the proper officials thereof, for the care of persons who become insane within this Territory and who are citizens thereof. Such care to be had in the insane asylums of the territory or state with which such contract may be made.

Same.

(3009) § **2.** Such contracts shall be in writing and when executed shall authorize persons entitled to treatment in any insane asylum, to be carried to that asylum and there held with like force and effect as though such asylum was within this Territory.

Patient, examination and confinement.

(3010) § **3.** Until an asylum for the insane be erected in this Territory, all patients shall be examined, held and their sanity determined as in this act provided. When adjudged insane as herein provided, the patient shall be carried to the hospital in accordance with the contract so made by the Governor.

Governor and Auditor, examiners.

(3011) § **4.** In cases of extreme necessity, the Governor and Territorial Auditor may hear the proof, and if satisfied that the patient is insane, shall make the order for him or her to be transported to the asylum.

Expenses, how met.

(3012) § **5.** To carry out the provisions of this act, there is appropriated out of the Territorial treasury three thousand dollars, or so much thereof as may be necessary to be paid out on claims proven before, and filed with the Territorial Auditor and warrants drawn therefor on the Territorial Treasurer.

(3013) § **6.** In each organized county in this Territory there shall be a board of commissioners, consisting of three persons, to be styled commissioners of insanity, two of whom shall constitute a quorum. The judge of probate shall be a member of said board and its chairman. The other two members shall be appointed by the board of county commissioners, one of whom shall be a respectable practicing physician, and the other a respectable practicing attorney; and appointments shall be made of persons residing as near as may be to the county seat. Immediately on the taking effect of this act these appointments shall be made as provided in this section. One of these commissioners shall be appointed for one year, the other for two years. The appointment of successors may be made at any time within three months prior to the expiration of the term of the incumbent, who shall hold his office until his successor shall be appointed and qualified. In case of the temporary absence or inability to act of two of the commissioners, the judge of probate shall call to his aid a respectable practicing physician or lawyer, who, after qualifying as in other cases, may act in the same capacity. The record in such cases must show the fact of such absence.

Appointment of commissioners of insanity.

(3014) § **7.** Before entering upon the duties of their office the persons so appointed shall take and subscribe an oath or affirmation to support the Constitution of the United States and the Organic Act of the Territory of Oklahoma, and to faithfully discharge their duties according to law as such commissioners, which obligation shall be filed with the clerk of said board, who shall enter a memorandum thereof on the records. On organizing they shall choose one of their number clerk of said board. They shall hold their meetings for business at the office of the judge of probate, unless for good reasons they shall fix on some other place. If they deem it necessary or advisable, they may hold sessions at such regular times as they may fix. They shall also meet on notice from the chairman of the board.

Oath of commissioners, organization and meetings.

(3015) § **8.** The chairman of the board shall sign and give or issue all notices, appointments, warrants, subpœnas or other process required to be given or issued by the commissioners, affixing thereto his official seal as judge of probate. He shall file and carefully preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with all notices, reports and other communications. He shall keep separate books in which to minute the proceedings of the board, and his entries shall be sufficiently full to show, with the papers filed, a complete record of their findings, orders and transactions. The notices, reports and communications herein required to be given or made, may be sent by mail, unless otherwise expressed or implied, and the fact and date of such sending and of their reception must be noted on the proper record.

Duties of chairman, books to be kept; notices.

(3016) § **9.** The said commissioners shall have cognizance of all applications for admission to the hospital or for the safe keeping otherwise of insane persons within their respective counties, except in cases otherwise specially provided for. For the purpose of discharging the duties required of them they shall have

Duties of the commissioners and their powers.

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power to issue subpœnas and compel obedience thereto, to administer oaths and do any act of court necessary and proper in the premises.

Application for admission to the hospital

(3017) § **10**. Application for admission to the hospital must be made in writing in the nature of an information verified by affidavit. Such information must allege that the person on whose behalf the application is made is believed by the informant to be insane and a fit subject for custody and treatment in the hospital; that such person is found in the county and has a legal settlement therein, if such is known to be the fact; and if such settlement is not in the county, where it is, if known, or where it is believed to be, if the informant is advised on the subject.

Investigation by the commissioner as to the alleged insanity.

(3018) § **11**. On the filing of an information as above provided, the commissioners shall at once take steps to investigate the grounds of the information. For this purpose they may require that the person for whom such admission is sought be brought before them, and that the examination be had in his or her presence, and they may issue their warrant therefor and provide for the suitable custody of such person until their investigation shall be concluded. Such warrant may be executed by the sheriff or any constable in the county, or if they shall be of opinion from such preliminary inquiries as they shall make, and in making which they shall take the testimony of the informant if they deem necessary or desirable, and of other witnesses if offered, that such course would probably be injurious to such person, or attended with no advantages, they may dispense with such presence. In their examination they shall hear testimony for and against such application, if any is offered. Any citizen of the county, or any relative of the person alleged to be insane, may appear and resist the application, and the parties may appear by counsel if they elect. The commissioners, whether they decide to dispense with the presence before them of such person or not, shall appoint some regular practicing physician of the county to visit or see such person and make a personal examination touching the truth of the allegation in the information, and touching the actual condition of such person, and forthwith report to them thereon. Such physician may or may not be of their own number, and the physician so appointed and acting shall certify under his own hand that he has, in pursuance of his appointment, made a careful personal examination as required, and that on such examination he finds the person in question insane, if such be the fact, and if otherwise, not insane; and in connection with his examination the said physician shall endeavor to obtain from the relative of the person in question, or from others who know the facts, correct answers, so far as may be, to the interrogatories hereinafter required to be propounded in such cases, which interrogations and answers shall be attached to his certificate.

How patient shall be sent to hospital.

(3019) § **12**. On the return of the physician's certificate the commissioners shall as soon as practicable conclude their investigations, and having done so they shall find whether the person alleged to be insane is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal

settlement of such person is in their county, and if not in their county, where it is, if ascertained. If they find such person is not insane, they shall order his or her discharge if in custody. If they find such person insane, and a fit subject for treatment and custody in the hospital, they shall forthwith issue their warrant and a duplicate thereof, stating such finding with the settlment of the person, if found, and if not found, their information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep such person as a patient therein. Such warrant and duplicate, with the finding and certificate of the physician, shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital, and delivering him or her, with such duplicate and physician's certificate and finding, to the superintendent thereof. The superintendent, over his official signature, shall acknowledge such delivery on the original warrant, which the sheriff shall return to the clerk of the commissioners with his costs and expenses indorsed thereon. If neither the sheriff nor his deputy is at hand, or if both are otherwise engaged, the commissioners may appoint some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath or affirmation faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff. The sheriff or any other person so appointed may take to his aid such assistance as he may need to execute such warrant; but no female person shall thus be taken to the hospital without the attendance of some other female, or some relative of such person. The superintendent in his acknowledgement of delivery must state whether there was any such person in attendance, and give the name or names if any. It is, however, hereby provided that if any relative or intimate friend of the patient, who is a suitable person, shall so request, he shall have the privilege of taking and executing such warrant, in preference to the sheriff or any other person, and without taking such oath or affirmation, and for so doing he shall be entitled to his necessary expenses, but no fees.

Disposition of insane person when accommodations of asylum are insufficient

(3020) § **13**. If in the case of any persons found to be insane and fit subjects for custody and treatment in the hospital as above provided, it shall be shown to the satisfaction of the commissioners that they cannot at once be admitted therein, and they cannot with safety be allowed to go at liberty, the commissioners shall require that such patient shall be suitably provided for otherwise until such admission can be had, or until the occasion therefor no longer exists. Such patients may be cared for either as public or private patients. Those shall be treated as private patients whose relatives or friends will obligate themselves to take care of and provide for them without public charge. In the case of any one treated as a private patient, the commisioners shall appoint some suitable person a special custodian, who shall have authority and whose duty it shall be in all suitable ways to restrain, protect and care for such patient in such manner as to best secure his or her safety and comfort, and in such manner as to best protect the persons and property of others.

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In the case of public patients the commissioners shall require that they be in like manner restrained, protected and cared for by the commissioners of the county or overseers of the poor, at the expense of the county, and they may accordingly issue their warrants to such commissioners of the county or overseers of the poor, who shall forthwith comply with the same. If there is no poor house for the reception of such patients, or if no more suitable place can be found, they may be confined in the county jail in charge of the sheriff. Or said commissioners in their discretion may require that such patients be taken to the asylum of any state that may be designated by the Governor, who is hereby authorized and empowered to make the best terms he can with the authorities of any asylum in any state for the admission of such patient or patients.

Insane persons cared for by the county

(3021) § **14**. On application to the commissioners, on behalf of persons alleged to be insane, and whose admission to the hospital is not sought, made substantially in the manner above prescribed and asking that provisions be made for their care as insane, either public or private within the county, and on proof of their insanity and need of care as above pointed out, the commissioners may provide for their care, protection and restraint as in the case of other applications.

Commissioners shall provide for insane person suffering for proper care.

(3022) § **15**. On information laid before the commissioners of any county that a certain insane person in the county is suffering for want of proper care, they shall forthwith inquire into the matter, and if they find the information well founded they shall make all needful provision for the care of such person as provided in other cases.

Insane not to be restrained of liberty except by proper authority.

(3023) § **16**. No person supposed to be insane shall be restrained of his or her liberty by any other person otherwise than in pursuance of authority obtained as herein required, excepting to such extent and such brief period as may be necessary for the safety of persons and property until such authority can be obtained.

Penalty for cruelty to the insane.

(3024) § **17**. Any person having care of an insane person, and restraining such person, either with or without authority, who shall treat such person with wanton severity, harshness or cruelty or shall in any way abuse such person, shall be guilty of a misdemeanor, besides being liable to an action for damages.

Insane who have been under county care may be transferred.

(3025) § **18**. Insane persons who shall have been under care, either as public or private patients, outside of the hospital, by authority of the commissioners of any county, may on application to that effect be transferred to the hospital whenever they can be admitted thereto, on the warrant of such commissioners. Such admission may be had without another inquest at any time within six months after the inquest already had, unless the commissioners shall deem further inquest advisable.

Questions to be answered on application for admission to hospital.

(3026) § **19**. In each case of application for admission to the hospital, correct answers to the following interrogations, so far as they can be obtained, shall accompany the physician's certificate; and if on further examination, after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected:

First. What is the patient's name? Married or single? If any children, how many? Age of youngest child, and age of patient?

Second. Where was the patient born?

Third. Where is his or her place of residence?

Fourth. What has been the patient's occupation?

Fifth. Is this the first attack? If not, when did others occur and what was their duration?

Sixth. When were the first symptoms of this attack manifested, and in what way?

Seventh. Does the disease appear to be increasing, decreasing or stationary?

Eighth. Is the disease variable, and are there rational intervals? If so, do they occur at regular periods?

Ninth. On what subject or in what way is derangement now manifested? State fully.

Tenth. Has the patient shown any disposition to injure others?

Eleventh. Has suicide ever been attempted? If so, in what way? Is the propensity now active?

Twelfth. Is there a disposition to filthy habits, destruction of clothing. breaking glass, etc.?

Thirteenth. What relatives, including grandparents and cousins, have been insane?

Fourteenth. Did the patient manifest any peculiarities of temper, habits, disposition or pursuits before the accession of the disease? Any predominant passion, religious impressions, etc,?

Fifteenth. Has the patient been subject to any bodily disease, epilepsy, suppressed eruptions, discharges of sores, or ever had an injury of the head?

Sixteenth. Was the patient ever addicted to intemperance in any form.

Seventeenth. Has restraint or confinement been employed? If so, what kind and how long?

Eighteenth. What is supposed to be the cause of the disease?

Nineteenth. What treatment has been pursued for the relief of the patient? Mention particulars and the effect.

Twentieth. State any other matter supposed to have any bearing on the case.

Proceedings for the release of patients alleged not to be insane.

(3027) § **20.** On a statement in writing, verified by affidavit, addressed to the judge of probate of the county in which the hospital is situated, or of the county in which any certain persons confined in the hospital has his or her legal settlement, alleging that such person is not insane and is unjustly deprived of his or her liberty, such judge shall appoint a commission of not more than three persons, in his discretion, to inquire into the merits of the case, one of whom shall be a physician; and if two or more are appointed, another shall be an attorney. Without first summoning the party to meet them, they shall proceed to the hospital and have a personal interview with such person, so managed so as to prevent him or her, if possible from suspecting its object; and they shall make any inquiries and examinations they may deem necessary and proper of the officers and records of the hospital, touching the merits of the case. If they shall

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deem it prudent and advisable they may disclose to the party the object of their visit, and in the presence of such party make further investigation of the matter. They shall forthwith report to the judge of probate making the appointment, the result of their examinations and inquiries. Such report shall be accompaniedby a statement of the case and signed by the superintendent. If on such report and statement and the hearing of the testimony, if any is offered, the judge of probate shall find the person not insane, he shall order his or her discharge. If on the contrary, he shall so state, and authorize his or her continued detention. The finding and order of the judge of probate, with the report and other papers, shall be filed in his office and entered on his records, and he shall forthwith notify the superintendent of his finding and order, and the superintendent shall carry out the order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses, and a reasonable compensation to be allowed by said judge of probate, and paid by the Territory out of any funds not otherwise appropriated: *Provided*, That the applicant shall pay the same if the judge shall find that the application was made without probable grounds, and shall so order.

Same; not to be repeated oftener than once in six months.

(3028) § **21**. The commission so provided for shall not be repeated oftener than once in six months in regard to the same party, nor shall such commission be appointed in case of any patient within six months of the time of his or her admission.

Insane person entitled to habeas corpus

(3029) § **22**. All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ the second time whenever it shall be alleged that such person has been restored to reason.

Salaries and fees, how and by whom paid,

(3030) § **23**. The commissioners of insanity shall be allowed at the rate of two dollars per day each for all the time actually employed in the duties of their office. The judge of probate in addition to what he is entitled to as commissioner of insanity, shall be allowed one- half as much more for making the required record entries in all cases of inquest, and of meetings of the board for any purpose, and for the filing of any papers required to be filed. He shall also be allowed twenty-five cents for such notice or process given or issued under seal, as herein required. The examining physician shall be entitled to five dollars for each case examined, and mileage at the rate of ten cents per mile each way. The sheriff shall be allowed for other service than conveying a patient to the hospital and returning therefrom the same fees as for like services in other cases. Witnesses shall be entitled to the same fees as witnesses in the district court. The compensation and expenses provided for above shall be allowed and paid out of the county treasury in the usual manner, except those of sheriff, which shall be paid out of the Territorial treasury in the usual manner.

Penalty when officer or other person neglects duty.

(3031) § **24**. Any officer required as herein [provided] to perform an act,and any person accepting an appointment under the provisions of this act, and wilfully refusing or neglecting to perform

his duty as herein prescribed, shall be guilty of a misdemeanor, besides being liable to an action for damages. Chap. 43.

(3032) § **25**. The term "insane" as used in this act includes any species of insanity or mental derangement. The term "idiot" is restricted to persons supposed to be naturally without mind. No idiot shall be admitted into the hospital for insane. Terms insane and idiot defined

This act shall be in force from and after its passage and approval.

CHAPTER XLIII.—INDEMNITY.

SECTION
1. Indemnity defined.
2. Agreement to indemnity against unlawful act.
3 Valid if act has been already done.
4 Includes acts of agent.
5. Several persons means each.
6. Joint and separate liability.
7. Rules for interpretation of contract.
8. Surety entitled to re-imbursement.
9. Bail.
10. Law of bail.

(3033) § **1**. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person. Indemnity defined,

(3034) § **2**. An agreement to indemnify a person against an act thereafter to be done, is void if the act be known by such person at the time of doing it to be unlawful. Agreement to indemnify against unlawful act void

(3035) § **3**. An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful unless it was a felony. Valid if act has already been done.

(3036) § **4**. An agreement to indemnify against the acts of a certain person, applies not only to his acts and their consequences, but also to those of his agents. Includes acts of agents.

(3037) § **5**. An agreement to indemnify several persons applies to each, unless a contrary intention appears. Several persons means each.

(3038) § **6**. One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately to every person injured by such act. Joint and separate liability.

(3039) § **7**. In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears: Rules for interpretation of contract of indemnity.

First. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

Second. Upon an indemnity against claims or demands, or damages or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

Third. An indemnity against claims or demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith, and in the exercise of reasonable discretion.

Fourth. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the in-

demnity; but the person indemnified has the right to conduct such defense, if he chooses to do so.

Fifth. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter, suffered by him in good faith, is conclusive in his favor against the former.

Sixth. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceedings against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former.

Seventh. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is applicable if he had a good defense upon the merits, which, by want of ordinary care, he failed to establish in the action.

Surety entitled to reimbursement.

(3040) § **8.** Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

Bail, sureties are.

(3041) § **9.** Upon those contracts of indemnity which are taken in legal proceedings, as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

Governed by law of bail.

(3042) § **10.** The obligations of bail are governed by the statutes specially applicable thereto.

CHAPTER XLIV.—INSURANCE.

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2. Incorporation and government of insurance companies.
3. Fire insurance.
4. Life and health insurance.

ARTICLE 1.—INSURANCE IN GENERAL.

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3 Insurance classed.
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80. Notice of loss without delay.
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Insurance defined.

(3043) § **1.** Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event.

Insurance interest.

(3044) § **2.** Any contingent or unknown event, whether past or future, which may indemnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter, with the exception of an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

Insurance classified.

(3045) § **3.** The most usual kinds of insurance are:

First. Marine insurance.

Second. Fire insurance.

Third. Life insurance.

Fourth. Health insurance; and,

Fifth. Accident insurance.

This law general.

(3046) § **4.** All kinds of insurance are subject to the provisions of this chapter.

Insurer and insured.

(3047) § **5.** The person who undertakes to indemnify another by a contract of insurance, is called the insurer, and the person indemnified is called the insured.

Who may insure.

(3048) § **6.** Any one who is capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents and others.

Who may be insured.

(3049) § **7.** Any one except a public enemy may be insured.

(3050) § **8.** Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise void the insurance will have the same effect although the property is in the hands of the mortgagee. Insurance of mortgaged property.

(3051) § **9.** If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights. Same, new contract.

(3052) § **10.** Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest. Insurable interest defined.

(3053) § **11.** An insurable interest in property may consist in: Insurable interest classified.

First. An existing interest.

Second. An inchoate interest founded on an existing interest; or,

Third. An expectancy coupled with an existing interest in that out of which the expectancy arises.

(3054) § **12.** A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value. Carrier has insurable interest.

(3055) § **13.** A mere contingent or expectant interest in anything, uot founded on an actual right to the thing, nor upon any valid contract for it, is not insurable. Contingent interest not insurable.

(3056) § **14.** The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof. Measure of interest.

(3057) § **15.** The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void. Without interest, contract void.

(3058) § **16.** An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime. Interest must exist

(3059) § **17.** Except in cases specified in the next four sections, and in the cases of life, accident and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are invested in the same person. Effect of transfer.

(3060) § **18.** A change of interest in a thing insured, after the occuranee of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss. Transfer after loss

(3061) § **19.** A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others. Same, exception.

(3062) § **20.** A change of interest by will or succession on the Change of interest by death.

death of the iusured, does not avoid an insurance, and his interest in the insurance passes to the person taking his interest in the thing insured.

Transfer by joint owners

(3063) § **21.** A transfer of interest by one of several partners, joint owners or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

Policy void, when.

(3064) § **22.** Every stipulation in a pollcy of insurance for the payment of loss whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering, is void.

Concealment defined.

(3065) § **23.** A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

Effect of concealment

(3066) § **24.** A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

Mutual disclosures.

(3067) § **25.** Each party to a contract of insurance must communicate to the other in good faith, all facts within his knowledge, which are, or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

Not bound to disclose.

(3068) § **26.** Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

First. Those which the other knows.

Second. Those which in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant.

Third. Those of which the other waives communication.

Fourth. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,

Fifth. Those which relate to a risk excepted from the policy, and which are not otherwise material.

Legal construction.

(3069) § **27.** Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the commnication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

Presumed to know general causes

(3070) § **28.** Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other and which may affect either the political or material perils contemplated, and all general usagse of trade.

Right to information waived.

(3071) § **29.** The right to information of material facts may be waived, either by the terms of insurance, or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

Information as to interest.

(3072) § **30.** Information of the nature or amount of the interest of one insured need not be communicated unless in answer to inquiry, except as prescribed by section 3088.

Fraud by the insured.

(3073) § **31**. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

Matters of opinion

(3074) § **32**. Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

Form of representation.

(3075) § **33**. A representation may be oral or written.

When made.

(3076) § **34**. A representation may be made at the same time with issuing the policy, or before it.

Interpretation.

(3077) § **35**. The language of a representation is to be interpreted by the same rules as the language of contracts in general.

Representation as to future.

(3078) § **36**. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

May qualify an implied warranty.

(3079) § **37**. A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

Representation withdrawn.

(3080) § **38**. A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

Time to which representation refers.

(3081) § **39**. The completion of the contract of insurance is the time to which a representation must be presumed to refer.

Information and belief.

(3082) § **40**. When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence.

Representation is false, when.

(3083) § **41**. A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

Effect of falsity.

(3084) § **42**. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract, from the time when the representation becomes false.

Materiality of representation.

(3085) § **43**. The materiality of a representation is determined by the same rule as the materiality of a concealment.

Modification, rescission.

(3086) § **44**. The provisions of this chapter apply as well to a modification of a contract of insurance as to its original formation. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right may be exercised at any time previous to the commencement of an action on the contract.

Policy defined.

(3087) § **45**. The written instrument, in which a contract of insurance is set forth, is called a policy of insurance.

Specification of policy.

(3088) § **46**. A policy of insurance must specify:

First. The parties between whom the contract is made.

Second. The rate of premium.

Third. The property or life insured.

Fourth. The interest of the insured in property insured, if he is not the absolute owner thereof.

Fifth. The risks insured against; and,

Sixth. The period during which the insurance is to continue.

Name of person insured.

(3089) § **47**. When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

Insurance by trustee or agent.

(3090) § **48**. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured, may be indicated by describing him as an agent or trustee, or by other general words in the policy.

Terms applicable to joint and common interest.

(3091) § **49**. To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

Specific person.

(3092) § **50**. When the description of the insured in a policy is so general that it may comprehend any person, or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

Policy may run to whomsoever.

(3093) § **51**. A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

Transfer of thing insured.

(3094) § **52**. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes owner of both policy and the thing insured.

Classes of policies.

(3095) § **53**. A policy is either open or valued.

Open policy defined

(3096) § **54**. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

Valued policy defined

(3097) § **55**. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

Successive insurance.

(3098) § **56**. A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements,

Receipt in policy.

(3099) § **57**. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

Agreement not to transfer void

(3100) § **58**. An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened is void.

Warranty classed.

(3101) § **59**. A warrant is either express or implied.

No form necessary.

(3102) § **60**. No particular form of words is necessary to create a warranty.

Express warranty must be written.

(3103) § **61**. Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it.

Time of warranty.

(3104) § **62**. A warranty may relate to the past, present, the future, or to any or all of these.

Construction of statement in policy.

(3105) § **63**. A statement in a policy, of a matter relating to

the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

Intention to do or not to do.

(3106) § **64**. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

Omission does not void the policy.

(3107) § **65**. When, before the time arrives for the performance of a warranty relating to the future, a loss insured against happens or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy.

Violation of terms entitles to rescission.

(3108) § **66**. The violation of a material warranty, or other material provisions of a policy, on the part of either party thereto entitles the other to rescind.

What avoids a policy.

(3109) § **67**. A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise a breach of an immaterial provision does not avoid the policy.

Breach of warranty without fraud

(3110) § **68**. A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception, prevents the policy from attaching to the risk.

Premium payable, when.

(3111) § **69**. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.

Insured entitled to return of premium, when.

(3112) § **70**. A person insured is entitled to a return of premium as follows:

First. To the whole premium is no part of his interest in the thing insured be exposed to any of the perils insured against.

Second. Where the insurance is made for a definite period of time, and the insured surrenders his policy to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim or loss or damage under the policy which has previously accrued.

to entitles the other to rescind.

Same.

(3113) § **71**. A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts of the existence of which the insured was ignorant without his fault; or when by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

When not entitled.

(3114) § **72**. If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned.

Return in ratio.

(3115) § **73**. In case of an over insurance by several insurers, the insurer is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

Contributions on over insurance.

(3116) § **74**. When an over insurance is effected by simultaneous policies, the insurers contribute to the premium to be returned, in proportion to the amount insured by their respective policies.

Same.

(3117) § **75**. When an over insurance is effected by successive policies, those only contribute to a return of the premium, who are exonerated by prior insurances from the liability assumed by them,

and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

Insurer liable, when.

(3118) § **76.** An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

Same

(3119) § **77.** An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to peril, not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

An exception includes consequences

(3120) § **78.** Where a peril is specially expected in a contract of insurance, a loss which would not have occurred but for such peril, is thereby excepted, although immediate cause of the loss was a peril which was not excepted.

Acts of the insured.

(3121) § **79.** An insurer is not liable for a loss caused by the wilful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others.

Notice of loss given without unnecessary delay

(3122) § **80.** In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without necessary delay.

Proof of loss, best in power of the insured.

(3123) § **81.** Where preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

ARTICLE 2.—INCORPORTATION AND GOVERNMENT OF INSURANCE COMPANIES. Chap. 44.

AN ACT to incorporate and govern insurance companies doing business in Oklahoma Territory.

[Took effect December 25, 1890.]

SECTION.
1. Who may incorporate, purpose.
2. May re-insure.
3. Declaration; copy of charter.
4. Form of charter.
5. Restrictions.
6. Capital of joint stock or mutual companies.
7. Opening books of joint stock and mutual companies
8. Investment of capital.
9. What real estate company may hold; sale.
10 Charter, etc , examined by Attorney General.; capital by commissioners of insurance; certificate filed; commence business; evidence.
11. By laws; seal.
12 Dividends; year defined.
13. Mutual companies; notes; numbers; assessments; liability.
14. Mutual or "joint stock" indicated on policy, etc.
15. Suits.
16. Liabilities of corporators, etc.; notes.
17. Joint stock companies may extend charter; mutual may become joint stock company.
SECTION.
18. Increase of capital stock.
19. Companies heretofore formed subject to this act.
20. Bodies corporate and politic.
21. Annual report to commissioner of insurance.
22. Foreign companies; agent; service of process.
23. Examination by commissioner or his appointee.
24 Suits for penalties.
25. Duration of company; legislative control, etc.
26. Lien on stock; stock impaired; reduction; receiver's statement; publication.
27. Fees of commissioners of insurance.
28. Agents responsible; embezzlement.
29. Reciprocity.
30. Tax on net receipts.
31. Security by foreign companies.
32. Amount of policy to be paid.
33. Policy to contain copy of application.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

(3124) § **1.** Any number of persons, not less than thirteen, may associate and form an incorporated company in this Territory for the following purposes, to-wit: To make insurance on dwelling houses, stores and all kinds of buildings and upon household furniture and other property, against loss or damage by fire, and the risks of transportation. Any and all insurance companies hereafter incorporated under the provisions of this act, which shall in the declaration and charter provided to be filed, have expressed an intention to make insurance or which shall have power to make insurance against loss or damage by the risks of transportation, shall have power to make insurance upon cargos, merchandise, freights and other property against loss and damage by all and any of the risks of transportation. Who may incorporate; purposes.

(3125) § **2.** Any companies organized under this act, shall have power to effect re-insurance of any risks taken by them respectively. May reinsure.

(3126) § **3.** Such persons shall file in the office of the commissioner of insurance a declaration signed by all the corporators, expressing their intention to form a company for the purpose of transacting the business of insurance as expressed in the first section of this act, which declaration shall also comprise a copy of Declaration; copy of charter.

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the charter proposed to be adopted by them and shall publish a notice of such their intention, once in each week, for at least four weeks, in a public newspaper in the county in which such insurance company is proposed to be located.

Form of charter.

(3127) § **4.** The charter comprised in such declaration shall set forth the name of the company, the place where the principal office for the transacting of its business shall be located, the mode and manner in which the corporate powers granted by this act are to be exercised, the mode and manner of electing its trustees or directors, a majority of whom shall be citizens of this Territory, and of filling vacancies, (but each director of a stock company shall be the owner in his own right, of at least five hundred dollars worth of the stock of such company, at its par value), the period for the commencement and termination of its fiscal year, and the amount of capital to be employed in the transaction of its business, and the Commissioner of Insurance shall have the right to reject any name or title of any company applied for when he shall deem the name too similar to one already appropriated, or likely to mislead the public in any respect.

Restrictions.

(3128) § **5.** No company formed under this act shall directly or indirectly, deal or trade in buying or selling any goods, wares, merchandize, or other commodities whatever, excepting such articles as may have heen insured by such company, and are deemed to be damaged by fire or water.

Capital of joint stock or mutual companies.

(3129) § **6.** No joint stock fire insurance company, organized under this act, or transacting business in this Territory, shall expose itself to any loss on any fire or inland transportation risk or hazard to an amount exceeding ten per cent of its paid up capital. No company formed under this act, for the purpose of doing the business of fire or inland navigation insurance on the plan of mutual insurance shall commence business until agreements have been entered into for insurance with at least two hundred applicants the premiums on which shall amount to not less than one hundred thousand dollars, of which twenty thousand dollars at least shall have been paid in cash, and notes of solvent parties founded on actual and *bona fide* applications for insurance, shall have been received for the remainder. No one of the notes received as aforesaid shall amount to more than five hundred dollars, and no two shall be given for the same risk, or be made by the same person or firm, except where the whole amount of such note shall not exceed five hundred dollars. Nor shall any such note be represented as capital stock unless a policy is issued upon the same within thirty days after the organization of the company. Upon a risk which shall not be for a shorter period than twelve months, each of said notes shall be payable in part or in whole at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company. And no note shall be accepted as part of such capital stock unless the same shall be accompanied by a certificate of a justice of the peace of the town or city where the person making such note shall reside, that the person making the same is in his opinion pecuni-

arily good and responsible for the same; and no such note shall be surrendered during the life of the policy for which it was given.

Opening books of joint and mutual companies.

(3130) § **7.** It shall and may be lawful for the individuals associated for the purpose of organizing any company under this act after having published the notice and filed the declaration and charter as required by the third section of this act, and also on filing in the office of the commissioner of insurance, proof of such publication by the affidavit of the publisher of such newspaper, his foreman or clerk, to open books for subscription to the capital stock of the company so intended to be organized, and to keep the same open until the full amount specified in the charter is subscribed; or in case the business of such company is proposed to be conducted on the plan of mutual insurance, then to open books to receive propositions, and to enter into agreements in the manner and to the extent specified in the sixth section of this act.

Investment of capital.

(3131) § **8.** It shall be lawful for any insurance company organized under this act, or any such company under any law of this Territory, to invest its capital and the fund accumulated in the course of its business, or any part thereof, in bonds and mortgages on any improved unincumbered real estate within the Territory of Oklahoma, worth fifty per cent more than the sum loaned thereon (exclusive of buildings, unless such buildings are insured and the policy transferred to said company,) and also in the bonds of this Territory or bonds or Treasury notes of the United States; and, in the bank stock of national banks; and, also in the stock and bonds of any county or incorporated city in this Territory authorized to be issued by the Legislature; and to lend the same, or any part thereof, of such stock or bonds or Treasury notes, or upon bonds or mortgages as aforesaid, and to change and to reinvest the same as occasion may from time to time require, but any surplus money over and above the capital stock of such fire or other insurance companies, or any such insurance companies incorporated under any law of this Territory, may be invested in or loaned upon the pledge of the public stock or bonds of the United States or any one of the states of the stock bonds or other evidences of indebtedness of any solvent, dividend paying institution incorporated under the laws of this Territory or of the United States except their own stock; *Provided, always*, That the current market value of such stocks, bonds and other evidences of indebtedness shall be at all times during the continuance of such loans at least ten per cent more than the sum loaned thereon.

What real estate company may hold; sale.

(3132) § **9.** No company organized by or under this act shall purchase, hold or convey real estate, excepting for the purposes and in the manner herein set forth, to-wit: *First*, Such as shall be requsite for its convenient accommodation in the transaction of business or second. *Second*, Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due. *Third*, Such as shall have been conveyed to it in satisfaction of debts previously contracted in their legitimate business or for money due; or, *Fourth*, Such as shall have been purchased at sales upon judg-

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ments, decrees or mortgages obtained or made for such debts; and it shall not be lawful for any such company to purchase, hold or convey real estate in any other case or for any other purpose; and all such real estate as may be acquired as aforesaid, and which shall not be necessary for the accomodation of such company in the transaction of its business, shall be sold and disposed of within five years after such company shall have acquired title thereto, unless the company shall procure a certificate from the Commissioner of Insurance that the interest of the company will suffer materially by a forced sale thereof; in which event the sale may be postponed for such period as the said Commissioner shall direct in said certificate; and the said Commissioner may also give such certificate and extend the time for holding real estate in like circumstances, on the application of any insurance company heretofore incorporated.

Charter etc. examined by attorney general; capital by commissioner of insurance, certificate filed, commence business; evidence,

(3133) § **10.** The charter and proof of publication herein required to be filed by every such company, shall be examined by the Attorney-General. and if found conformable to this act, and not inconsistent with the Oaganic Act or laws of this Territory, shall be certified by him to the Commissioner of Insurance, who shall thereupon cause an examination to be made, either by himself or by three disinterested persons specially appointed by him for that purpose, who shall certify under oath, that the capital therein required of the company named in the charter, according to the nature of the business proposed to be transacted by such company has been paid in and is possessed by it in money or in such stocks and bonds and mortgages as are required by the eighth section of this act; or if a mutual company, that has received and is in actual possession of the capital, premium or *bona fide* engagements of insurance or other securities, as the case may be, to the full extent and of the value required by the sixth section of this act, and the name and the residence of the maker of each premium note forming part of the capital, and the amount of such note, shall be returned to said commissioner, and the corporators and officers of such company shall be required to certify under oath that the capital exhibited to these persons is *bona fide* property of the company. Such certificate shall be filed in the office of said commissioner who shall thereupon deliver to such company a certified copy of the charter and of said certificates, which on being filed in the office of the clerk of the county where the company is to be located shall be their authority to commence business and issue policies; and such certified copy of the charter and of said certificates may be used in evidence for or against said company with the same effect with the originals, and shall be conclusive evidence of the fact of the organization of such company.

By-laws, seal

(3134) § **11.** The corporators or the trustees or the directors, as the case may be, of any company organized under this act, shall have power to make such by-laws not inconsistant with the Organic Act or the laws of this Territory, as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same when necessary to alter and amend; and

they and their successors may have a common seal and may change and alter the same at their pleasure.

Dividends; year defined.

(3135) § **12.** It shall not be lawful for the directors, trustees or managers of any such insurance company to make any dividend except from the surplus profits arising from their business; and in estimating such profits there shall be reserved therefrom a sum equal to the whole amount of unearned premiums on unexpired risks and policies and there shall be reserved all sums due the corporation on bonds and mortgages, stocks and book accounts of which no part of the principal or interest thereon has been paid during the last year, and for which foreclosure or suit has not been commenced for collection, or which after judgment obtained thereon, shall have remained more than two years unsatisfied and on which interest shall not have been paid, and also there shall be which interest shall not have been paid, and also there shall be reserved all interest due or accrued and remaining unpaid: *Provided, always*, That any company may declare dividends not exceeding ten per cent on its capital stock in any one year, that shall have accumulated and be in possession of a fund in addition to the amount of its capital stock and of such dividend, and all actual outstanding liabilities equal to one half of the amount of all premiums on risks not terminated at the time of making such dividends. Any dividend made contrary to these provisions shall subject the company making the same to a forfeiture of its charter, and each stockholder receiving it to a liability to the creditors of such company to the extent of the dividend received, in addition to the other penalties and punishments in such case made and provided. This section shall not apply to the declaration of scrip dividends by participating companies, but no such scrip dividends shall be paid except from surplus profits after reserving all sums as above provided, including the whole amount of premiums on unexpired risks. The word "year" whenever used in this section shall be construed to mean the calendar year.

Mutual companies, notes, members; assessments; liability.

(3136) § **13.** All notes deposited with any mutual insurance company at the time of its organization, as provided in section 6 shall remain as security for all losses and claims until the accumulation of the profits invested as required by the eight section of this act, shall equal the amount of cash capital required to be possessed by stock companies organized under this act, the liability of each note decreasing proportionately as the profits are accumulated; but any note which may have been deposited with any such mutual insurance company subsequent to its organization in addition to the cash premium, or any insurance effected with such company may, at the expiration of the time of such insurance, be relinquished and given up to the maker thereof or his representative, upon his paying his proportion of all losses and expenses which may have accrued thereon, during such term. The directors or trustees of any such company shall have the right to determine the amount of the note to be given in addition to the cash premium by any person insured in such company, but in no case shall the note be more than five times the whole amount of the cash premium, and every person effecting insurance in any mutual company organized under

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this act, and also their heirs, executors, administrators and assigns continuing to be insured shall thereby become members of said corporation during the period of insurance, and shall be bound to pay for losses and such necessary expenses as aforesaid accruing in and to said company in proportion to said amount of his deposit note or notes. The directors shall as often as they deem necessary after receiving notice of any loss or damage by fire sustained by any member and ascertaining the same, or after the rendition of any judgment against said company for loss or damage, settle and determine the same to be paid by the several members thereof, as their respective portion of such loss, and publish the same in such manner as they shall sell see fit, or as the by-laws shall haye prescribed, and the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the officers of the company within thirty days after the publication of said notice, and if any member shall for the space of thirty days after the publication of said notice, and service of such notice upon such member by mail, directed to him at his post-office address as written in or upon his application for insurance, neglect or refuse to pay the sum assessed upon him as his proportion of said loss as aforesaid in such case, the directors may sue for and recover the whole amount of his deposit note or notes, with cost of suit, but execution shall only issue for assessments and costs as they accrue. If the whole amount of the deposit notes shall be insufficient to pay the loss occasioned by any fire or fires in such case the sufferers insured by the said company shall receive, towards making good their respective losses, a proportional share of the whole amount of said notes, according to the sums by them respectively insured, but no member shall ever be required to pay for any loss occasioned by fire or inland navigation more than the whole amount of his deposited note.

"Mutual" or "joint stock" indicated on policy etc.

(3137 § **14.** Every fire or other insurance company hereafter organized, if it be a mutual company, shall embody the word "mutual" in its title, which shall appear on the first page of every policy and renewal receipt; and every company doing business as a joint stock company shall upon the face of its policy, in some suitable manner, express that such policy is a stock policy.

Suits.

(3138) § **15.** Suits at law may be maintained by any corporation formed under this act against any of its members or stockholders for any cause relating to the business of such corporations, also suits at law may be prosecuted and maintained by any member or stock-holder against such corporation for any losses which may have accrued if payment is withheld after such losses may have become due.

Liablity of corporations, etc, notes

(3139) § **16.** The trustees and corporators of any company organized under this act, shall be severally liable for all debts or responsibilities of such company, to the amount by him or them subscribed, until the whole amount of the capital of such company shall have been paid in, and a certificate thereof recorded as hereinbefore provided. Notes taken in advance of premiums under this act, are not to be considered debts of the company, in deter-

mining whether a company is insolvent, but are to be regarded as assets of the company.

Joint stock company may extend charter; mutual may become joint stock company.

(3140) § **17.** Any existing joint stock fire insurance company heretofore incorporated under the laws of this Territory, and any company organized under this act, having a capital of at least one hundred thousand dollars ($100,000), may without increasing its capital at any time, within two years previous to the termination of its charter, after giving notice at least once a week for four weeks successively, in a newspaper published in the county where such company is located, of such intention, and with a declaration under its corporation seal, signed by the president and two-thirds of its directors, of their desire for the extension, extend the term of its original charter to the time specified in the twenty-sixth section of this act, by altering and amending the same so as to accord with the provisions of this act, and filing a copy of such amended charter with the declaration aforesaid, in the office of the Commissioner of Insurance, whereupon the same proceedings shall be had as are required in the tenth section of this act. And any mutual insurance company heretofore incorporated or organized under any of the laws of this Territory, having surplus assets aside from premiums and stock notes, sufficient to reinsure all its outstanding risks, after having given notice once a week, for four weeks of their intention and of the meeting hereinafter provided for, in a newspaper published in the county where such company is located, may with the consent of two-thirds of its incorporators or members, present at any regular annual meeting, or at any special meeting duly called for the purpose or with the consent, in writing, of two thirds of the corporators or members of such company, and the consent also of three-fourths of the trustees or directors, unless otherwise provided in the charter, become a joint company by comforming its charter to and otherwise proceeding in accordance with this act; and every member of such company on the day of such annual or special meeting or the date of said written consent, shall be entitled to priority to such capital stock of said company for one month after the opening of the books of subscription to such capital stock in proportion to the amount of cash premiums paid by such members on unexpired risks in force on the day of said annual or special meeting, or the date of such written consent; and every company so extended or charged shall come under the provisions of this act, in the same manner as if it had been incorporated originally under this act.

Increase of capital stock.

(3141) § **18.** Any existing fire insurance company and any company formed under this law may at any time increase the amount of its capital stock after notice given once a week for four weeks in any newspaper published in the county where such company is located, of such intention with the written consent of three-fourths in amount of its stockholders, unless otherwise provided in its charter, or if a mutual company, with the unanimous consent of its trustees unless otherwise provided in its charter by altering or amending their charter in this respect, and filing a copy of their charter so amended together with a declaration under its corporate seal, signed by its president and directors, of

their desire to do so, with such written consent of three-fourths in amount of its stockholders, or the unanimous consent of its trustees as aforesaid, to such increase, in the office of the Commissioner of Insurance and upon the same proceedings had as are required by the tenth section of this act.

Companies heretofore formed subject to thie act.

(3142) § **19.** All insurance companies heretofore organized in the Territory of Oklahoma and now doing business in this Territory, are hereby brought under all the provisions of this act, except that their capital may continue of the amounts and character named in and authorized by their respective charters during the existing terms of such charters, and the investment of the capital and assets of such companies may remain the same as prescribed by their charters, anything in this act to the contrary notwithstanding, and such companies shall also be entitled to the privileges and powers granted by said charters.

Bodies corporate and politic.

(3143) § **20.** All companies incorporated or extended under this act shall be deemed and taken to be bodies corporate and politic, in fact and in name, and shall be subject to all the provisions of law in relation to corporations so far as the same are applicable.

Annual report to commissioner of insurance.

(3144) § **21.** It shall be the duty of the president or vice-president and the secretary of each company organized under this act, or incorporated under any law of this Territory annually on the first day of January, or within one month thereafter, to prepare under their own oath or deposition in the office of the Commissioner of Insurance of the Territory, a statement of the condition of such company on the thirty-first day of December then next preceeding, exhibiting the following facts and items in the following form, namely.

First. The amount of the capital stock of the company actually paid in.

Second. The property or assets held by the company, specifying:

(*a*) The value as nearly as may be of the real estate held by such company:

(*b*) The amount of cash on hand and deposited in banks to the credit of the company, specifying in what banks the same are deposited.

(*c*) The amount of cash in the hands of agents and in course of transmission.

(*d*) The amount of loans secured by mortgages and bonds, constituting the first lien on real estate, on which there shall be less than one year's interest due or owing.

(*e*) The amount of loans on which interest shall not have been paid within one year previous to such statement.

(*f*) The amount due the company on which judgments have been obtained.

(*g*) The amount of stocks of this Territory, of the United States or any state, or any incorporated city in this Territory and any other stocks owned by the company, specifying the amount, number of shares and "par" and "market" value of each kind of stock.

(*h*) The amount of stocks held thereby as collateral securities for loans with the amount loaned on each kind of stock, its par value and the market value.

(*i*) The amount of assessment on stock or premium notes paid and unpaid, specifying each.

(*j*) The amount of interest actually due and unpaid.

(*k*) The amount of premium notes on hand on which policies are issued.

(*l*) The amount of installment notes on hand on which policies are issued.

Third. The liabilities of such company specifying:

(*a*) The amount of losses due and yet unpaid.

(*b*) The amount of claims resisted by the company and the reason why such claims are resisted.

(*c*) The amount of losses incurred during the year including those claimed and not yet due, and including the probable amount of those reported to the company, upon which no action has been taken.

(*d*) The amounts of dividends declared and due and remaining unpaid.

(*e*) The amount of dividends, if any, declared but not yet due.

(*f*) The amount of money borrowed and security, if any, given for the payment thereof.

(*g*) All other existing claims against the company and also the gross amount of outstanding risks, and the gross amounts of premiums thereon nuearned.

Fourth. The income of the company during the preceding year, specifying:

(*a*) The amount of cash premiums received.

(*b*) The amount of notes received.

(*c*) The amount of interest money received.

(*d*) The amount of income received from other sources, or:

Fifth. The expenditures during the preceding year, specifying:

(*a*) The amount of losses paid during the year, stating how much of the same accrued prior and how much subsequent to the date of the preceding statement and the amount at which such losses were estimated in such preceding statement.

(*b*) The amount of dividend paid during the year.

(*c*) The amount of expenses paid during year, including commissions and fees to agents and officers of the company.

(*d*) The amount paid in taxes, specifying the amount paid in this Territory.

(*e*) The amount of all other payments and expenditures.

It shall be the duty of the Commissioner to establish a classification of risks into any number or classes not less than four, according to the degree of hazard of such risk; and the Commissioner shall require said companies as part of the aforementioned statement, to give the numbers of policies in force, covering property embraced in each of said classes, and the aggregate amount at risk upon the property in each class. The Commissioner of Insurance is hereby authorized and empowered to address any inquiries to any insurance company, or secretary thereof, in relation to its doings or con-

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ditions, or any other matter connected with its transactions and it shall be the duty of any company so addressed to promptly reply in in writing to any such inquiries. The statement of any company, the capital of which is composed, in whole or in part, of notes, shall in addition to the foregoing, exhibit the amount of notes, originally forming the capital and also what proportion of said notes are still held by such company and considered capital. Every insurance company, organized under any law of this Territory, failing to make out and deposit such statement, or to reply to any inquiry of said commissioners shall be subject to the penalty of five hundred dollars ($500), and an additional five hundred dollars ($500) for every month that such company shall continue thereafter to transact any business of insurance without complying with this section. It shall be the duty of the Commissioner of Insurance to cause the information contained in the statement required by this section to be arranged in the tabular form and printed in his biennial report.

Foreign companies; agents, service of process.

(3145) § **22.** It shall not be lawful for any insurance company, association or partnership incorporated by or organized under the laws of any other territory or state of the United States, or any foreign government for the purposes specified in this act, directly or indirectly to take risks or transact any business of insurance in this Territory unless possessed of the amount of actual capital required by similar companies formed under the provisions of this act; and any such company desiring to transact any such business as aforesaid, by any agent or agents in this Territory, shall first appoint any attorney in each county in this Territory on whom process of law can be served and filed in the office of the Commissioner of Insurance of the Territory a written instrument duly signed and sealed certifying such appointment, which shall continue until another attorney be substituted; and any process issued by any court in this Territory, and served upon such attorney by the proper officer of the county in which such attorney may reside or may be found shall be deemed a sufficient service of process upon such company [service] may also be made in any other manner provided in this act. In case any insurance company, *not* incorporated in this Territory, shall cease to transact business in this Territory, according to the laws thereof, the agents last designated or acting as such for such corporation, shall be deemed to continue agents for such corporation for the purpose of servrng process for commencing action upon any policy or liability issued or contracted while such corporation transacted business in this Territory; and service of such process for the cause aforesaid, upon any such agent, shall be deemed a valid personal service upon such corporation. And every such company, association or partnership shall also file with the Commissioner of Insurance a certified copy of their charter together with a statement, under the oath of the president or vice-president or other chief officer, and secretary of the company for which he or they may act stating the name of the company and place where located, the amount of its capital, with a detailed statement of its assets showing the amount or cash on hand, in the banks or in the hands of agents, the

amount of real estate and how much the same is encumbered by mortages, the number of shares of stocks of every kind owned by the company, the par and market value of the same, amount loaned on bond and mortgage, the amount loaned on the security stating the kind and amount loaned on each, and the estimated value of the whole amount of such securities, and other assets or property of the company, also stating the indebtedness of the company, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment, the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company; also a copy of the last annual report, if any, made under any law of the Territory, or state by which said company was incorporated; and no agent shall be allowed to transact business for any such company whose capital is impaired to the extent of twenty per cent thereof while such deficiency shall continue. The stocks and securities so deposited may be exchanged from time to time, for other securities receivable as aforesaid. And so long as the company so depositing shall continue solvent and comply with the laws of this Territory, such company or association may be permitted by the said commissioners to collect the interest or dividend on said deposits, and where a deposit is made of bonds and mortgages accompanied by full abstracts of titles and searchers, the fees for an examination of title the counsel to be paid by the party making the deposits, shall not exceed twenty dollars ($20) for each mortgage and the fee for the appraisal of property shall be five dollars ($5) to each appraiser, not exceeding two, besides expenses for each mortgage. Nor shall it be lawful for any agent or agents to act for any company or companies referred to in this section directly or indirectly in taking risks or transacting the business of fire or other insurance in this Territory without procuring from the Commissioner of Insurance of this Territory a certificate of authority stating that such company has complied with all the requsitions of this act which apply to such companies, and the names of the attorneys appointed to act for the company. The statements and evidences of investments required by this section shall be served from year to year in such manner and form as may be required by said Commissioner with an additional statement of any amount of premiums received and losses incurred in this Territory during the preceding year, so long as such agency continues; and the said Commissioner on being satisfied that the capital, securities and investments remain secure as hereinbefore provided, shall furnish a renewal of the certificate as aforesaid. Any violation of any of the provisions of this act, shall subject the party violating the same to a penalty of five hundred dollars($500) for each violation and of the additional sum of one hundred [dollars] ($100) for each month during which any such agent shall neglect to file such affidavits and statements as are herein required. Every agent of any insurance company shall in all advertisements of such agency, publish the location of the company, giving the name of the city or village in which the company is located and the state or government under the laws of which it is organized. The term "agent or agents" used in this section,

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shall include an acknowledged agent, surveyor, broker or any other person or persons who shall, in any manner aid in transacting the insurance business of any insurance company not incorporated by the laws of this Territory. In the case of neglect or refusal to make such annual statement as aforesaid, all persons acting in this Territory as agents or otherwise, in transacting the business of insurance for said companies, corporations, associations, partnerships or individuals, shall be subject to the same penalties provided by law in case of the failure of any insurance company organized under the laws of this Territory to make an annual statement as provided in this act. Foreign insurance companies shall be required to make and file their annual statements and evidences on the first day of January in each year, or within thirty days thereafter, made out for the year ending on the preceding thirtieth of September. The suplementary annual statements of their business and affairs in the United States, duly verified by the resident manager of such company shall be filed in the month of January in each year, made out for the year ending the thirty-first day of December immediately preceding.

Examination by commissioner or his appointee.

(3146) § **23.** It shall be the duty of the Commissioner of Insurance of the Territory, whenever he may deem it expedient so to do, in person or by one or more persons, to be appointed by him for that purpose not officers or agents of, or in any manner interested in any insurance company doing business in this Territory except as policy holders to examine into the affairs of any insurance company incorporated in this Territory, or doing business by its agents in this Territory; and it shall be the duty of the officers or agents of any such company doing business in this Territory, to cause their books to be opened for the inspection of the Commissioner or the person or persons so appointed, and otherwise to facilitate such examination so far as it may be in their power to do, and to pay all reasonable expenses incurred therein; and for that purpose the said Commissioner or person or persons so appointed by him, shall have the power to examine under oath the officers and agents of any company or any other person or persons relative to the business of said company, and whenever the said Commissioner shall deem it for the best interests of the public so to do, he shall publish the result of said investigation in one or more newspapers in this Territory. And whenever it shall appear to the said Commissioner from such examination that the assets of any company incorporated in this Territory are insufficient to justify the continuance in business of any such company, he may direct the officers thereof to require the stock-holders to pay in the amount of such deficiency within such period as he may designate in such requisition, or he shall communicate the fact to the Attorney General, whose duty it shall then become to apply to the district court of the county in which the principal officers of said company shall be located, for an order requiring them to show cause why the business of such company should not be closed, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it shall appear to the satisfaction of said court that the assets and

funds of said company are not sufficient as aforesaid, or that the interests of the public so require, the said court shall decree a dissolution of said company and a distribution of its effects. Any company receiving the aforesaid requisition from the said commissioner shall forthwith call upon its stockholders for such amounts as will make its capital equal to the amount fixed by the charter of said company and in case any stockholder of such company shall refuse or neglect to pay the amount so called for after the notice personally given or by advertisement, in such time and manner as the said Commissioner shall approve, it shall be lawful for the said company to require the return of the original certificate of stock held by such stock-holder and in lieu thereof to issue new certificates for such number of shares as the said stock-holder may be entitled to in proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company the value of such shares for which new certificates shall be issued to be ascertained under the direction of the said Commissioner, and the company paying for the fractional parts of shares and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor to the amount sufficient to make up the original capital of the company. And it is hereby declared that in the event of any additional losses accruing upon new risks taken after the expiration of the period limited by said Commissioner, in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before such deficiency shall have been made up, the directors shall be individually liable to the extent thereof. And if upon such examination, it shall appear to the said Commissioner that the assets of any company chartered on the plan of mutual insurance, under this act, are insufficient to justify the continuance of such company in business, it shall be his duty to proceed in relation to such company in the same manner as is herein required in regard to joint stock companies; and the trustees or directors of such company are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by said Commissioner for filling up the deficiency in the capital and before such deficiency shall have been brought up. Any transfer of the stock of any company organized under this act, made during the pending of any such investigation, shall not release the party making the transfer from his liability for losses which may have accrued previous to the transfer. And whenever it shall appear to the said Commissioner from the report of the person or persons appointed by him that the affairs of any company not incorporated by the laws of this Territory, are in an unsound condition, he shall revoke the certificates granted in behalf of such company, and shall cause a notification thereof to be published in a newspaper of general circulation published in the Territory, and mail a copy thereof to each agent of the company, and the agent or agents of such company, after such notice shall be required to discontinue the issuing of any new policy and the renewal of any previously issued.

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Suits for penalties.

(3146) § **24.** Every penalty provided for by this act, shall be sued for and recovered in the name of the Territory of Oklahoma, by the county attorney of the county in which the company or agent or agents so violating shall be situated, and one-half of said penalty when recovered, shall be paid into the treasury of said county and the other half to the informer of such violation; and in the case of non-payment of such penalty, the party so offending shall be liable to imprisonment for a period not exceeding six months, in the discretion of any court having cognizance thereof. Such penalties may also be sued for and recovered in the name of the Territory of Oklahoma, by the Attorney-General, and when sued for and collected by him, shall be paid into the Territorial treasury.

Duration of company; legislative control, etc.

(3147) § **25.** All companies incorporated or extended under this act may provide in their charters for not more than thirty years, but the Legislature may at any time alter or amend this act, and provide for the closing up of the business and affairs of any company formed under it. Nothing herein contained shall be construed to prevent subsequent extension of the charters of companies organized or extended under this act.

Lien on stock; stock impaired; reduction; receiver's statement; publication.

(3148) § **26.** Any fire or other insurance company chartered by this Territory, may have a lien by passing a by-law to that effect, upon the stock or certificate of profits owned by any member for any debt hereafter to become due to said company for premiums, by stating that said stock is subject to any such lien upon the certificates of stock or profits, and such lien may be waived by the consent of the president of said company upon the transfer of any such stock. Whenever it shall appear to the Commissioner of Insurance of the Territory from an examination made by him in the manner prescribed by law, that the capital stock of any joint stock company organized pursuant to law, is impaired to an amount exceeding twenty-five per cent of such capital, and he shall be of the opinion that the interests of the public will not be prejudiced by permitting such company to continue business with a reduced capital, it shall be lawful for such company with the permission of the said Commissioner to reduce its capital stock and the par value of the shares thereof, to such amount as the said Commissioner may, under his hand and official seal certify to be proper, and as shall in his opinion, be justified by the assets and property of such company: *Provided*, That no part of such assets and property shall be distributed to the stockholders. *And provided further*, That the capital stock of any such company shall not be reduced to an amount less than the sum now required by law for the organization of a new company under the general insurance laws for the transaction of business at the place where such company is located and of the kind which such company shall be made to accept upon a resolution of its board of directors approved by at least two-thirds of the directors and certified under the corporate seal signed by the president and at least two-thirds of its directors, and proved or acknowledged in the manner required by law for the proof or acknowledgement of conveyances; which certificate shall be filed in the office of said Commissioner before any

action shall be had by him thereon. The Insurance Commissioner of the Territory in case he shall permit any such company to reduce its capital in the manner provided in this act, shall execute the certificate required in this act, in duplicate and deliver one of such certificates to the officers of such company, who shall forthwith file the same with the clerk of the county in which the company is located, and the other such certificate shall be filed in the office of said Commissioner. Such company upon filing such certificate with the county clerk as required by this act, shall with such reduced capital possess the same rights and be subject to the same liabilities that it possessed or was subject to at the time of the reduction of its capital, and the charter of such company shall be deemed to be amended in respect to the amount of capital and the par value of the shares so as to conform to such reduction. It shall be lawful for the said company to require the return of the original certificate of stock held by each stockholder and in lieu thereof, to issue new certificates for such numbers of shares as each stockholder may be entitled to in proportion that the reduced capital may be found to bear to the original capital of the company. It shall be lawful for any such company after its capital shall be so reduced as aforesaid, to increase its capital stock in the mode prescribed by this law. It shall be the duty of all receivers and trustees of insurance companies, during the month of January of each year, and any time when required by the Insurance Commissioner of the Territory, to make and file annual and other statements of their assets and liabilities, and of their income and expenditures in the same manner and form and under the same penalties as the officers of such companies are now required by law to make annual and other statements to the Insurance Commissioner's office. The said commissioner shall also cause its annual statement required to be filed by this act, to be published in one daily newspaper of general circulation not less than fifteen days.

Fees of commissioner of insurance.

(3149) § **27.** There shall be paid to the Commissioner of Insurance by every company, association, person or persons or agent to whom this act shall apply, the following fees: For filing the declaration or the certified copy of a charter herein required the sum of thirty dollars ($30); for filing the annual statement required, ten dollars ($10); for each certificate of authority to agents of companies or association not incorporated under the laws of this Territory, two dollars ($2); for each certificate of authority to agents of companies incorporated under the laws of this Territory, fifty cents (50); for every copy of paper filed in his office the sum of twenty cents (20) per folio; and for fixing the seal of said office to such copy and certifying the same, one dollar ($1); and in case two or more companies shall combine and effect insurance under a joint policy each and every company shall pay the fees provided herein the same as if each company wrote separate and distinct policies; and of the fees so received by the commissioner, thirty-five per cent shall be retained by him and the balance be paid over to the Territorial Treasurer. Before any insurance company shall be permitted to do any business in this

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Territory, such company, if a company organized within the Territory, shall pay a license tax to the Territory Treasurer of ten dollars, and if organized under the laws of any other state, territory or foreign government, the sum of twenty-five dollars, which license tax shall be required to be paid each year, thirty-five per cent of which shall be paid to the Commissioner of Insurance.

Agents responsible embezzlement.

(3150) § **28.** Agents appointed by any company doing business in this Territory, to solicit for application for insurance to collect the premiums on the same and to transact the other duties of agents in such cases, shall be held personally responsible to such company for any money received for such company; and in case any such agent shall embezzle or fraudulently convert to his own use or shall take or secrete with intent to embezzle and convert to his own use without consent of such company, any money belonging to such company which shall have come into his possession or shall be under his care by virtue of his agency, he shall be deemed by so doing, to have committed the crime of larceny, and on conviction, shall be subject to the fines and penalties provided by the statutes in such cases.

Reciprocity.

(3151) § **29.** Whenever the existing or future laws of any state or territory of the United States, or any other kingdom or country, shall require of insurance companies incorporated by or organized under the laws of this Territory, and having agencies in such other state, territory, kingdom or country, and deposits or securities in such state, territory, kingdom or country, for the protection of policy holders, or otherwise, or any payment of taxes, fines, penalties, certificates of authority, license fees, or otherwise greater than the amount required for such purposes from similar companies of other states by the then existing laws of this Territory, then and in every such case, all companies of such states establishing or having heretofore established an agency or agencies in this Territory, shall be and are hereby required to make the same deposit for a like purpose with the Commissioner of Insurance of this Territory, and to pay the Commissioner for taxes, fines, penalties, certificates of authority, license fees and otherwise, an amount equal to the amount of such charges and payments imposed by the laws of such territory or state upon the companies of this Territory and the agents thereof: *Provided*, That the payment required of such foreign companies shall in no case be less than required by this act.

Tax on net receipts.

(3152) § **30.** Every agent of an insurance company incorporated by the authority of any other state or government, shall return to the proper officer of the county, town, or municipality in which the agency is established, in the month of January, annually, the amount of net receipts, of such agency, which shall be entered on the tax lists of the county, town, and municipality, and subject to the same rate of taxation for all purposes, Territorial, county, town, and municipality that other personal property is subject to at the place where created.

Security by foreign companies.

(3153) § **31.** All fire or fire and marine insurance companies organized under the laws of any foreign country establishing or having heretofore established an agency or agencies in this Terri-

tory, shall be and are hereby allowed to make the deposit required by the laws of this Territory in such bonds, stocks or other securities of such foreign country: *Provided*, The same shall not be received for more than their par value, nor shall they in any case be valued at more than their current market value.

Amount of policy to be paid.

(3154) § **32**. All insurance companies issuing policies in this Territory shall be required to pay in case of total loss the full amount, and in case of partial loss shall be required to pay the amounf of loss so sustained, for which the property is insured; *Provided, however*, That no policy shall be issued which shall contain a sum greater sum than seventy-five per cent of the value of the property so insured.

Policy to contain copy of application.

(3155) § **33**. All insurance policies issued in this Territory under this act, must be accompanied by a copy of the application for insurance upon which the policy was issued, and such copy shall be evidence in favor of the assured of the matter in his application contained.

This act shall take effect from and after the adjournment of this session of the Legislative Assembly.

ARTICLE 3.—FIRE INSURANCE.

SECTION.
1. Alteration of use; increasing risk
2. Same; not increasing risk.
3. Act of insured not increasing risk.
4. Measure of indemnity.

Alteration of use, increasing the risk.

(3156) § **1**. An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk entitles the insurer to rescind a contract of fire insurance.

Same; not increasing risk.

(3157) § **2**. An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

Act of insured not increasing risk

(3158) § **3**. A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisons, even though it increases the risk, and is the cause of a loss.

Measure of indemnity.

(3159) § **4**. If there is no violation in the policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance.

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ARTICLE 4.—LIFE AND HEALTH INSURANCE.

AN ACT to organize and regulate the business of life insurance.

[Took effect December. 25 1890.]

SECTION.

1. Capital guaranteed; investment of.
2 Examination by commissioner; fee.
3. Section one applies to foreign companies.
4. Who to choose directors in mutual companies,
5. Annual statement.
6. The form for life insurance companies.
7. Foreign companies; statement of.
8. Companies without the United States; statement.
9. Neglect to make returns; penalty.
10. Stop issuing policies, when.
11. Investment of funds.
12; Investment in other states.
13. Inquiries by commissioner; revoke certificate.
14. Dividends by mutual companies.
15. Foreign companies; agent; service of process.
16. Territorial Treasurer to receive deposits; income.
17. Valuing policies in special cases.
18. Life companies; not to insure what.
19. Rights of married women; may insure life of husband.
20. Conditional relations between state laws.
21. Foreign companies; deposit copy of charter, etc.
22. To exhibit name or style of company, etc.
23. Who are agents of foreign companies.
24. Penalty.
25. Commissioner's fees.
26. Publishing biennial statements.
27. Insurance upon life, when payable.
28. Insurable interest in life and health.
29. Assignee of policy of life insurance.
30. Notice of the transfer.
31. Measure of indemnity.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Capital guarantee; investment of

(3160) § **1.** That before any life insurance company goes into operation, under the laws of this Territory. a guaranty capital of at least one hundred thousand dollars, shall be paid in money, and invested in the bonds of the United States or of this Territory, or of any county, or city, or town of this Territory, estimated at their market value, or in such other stocks and securities as may be approved by the Commissioner of Insurance, or in mortgages, being first liens on real estate in this Territory, the said real estate being worth at least twice the amount of the money loaned thereon, with abstract showing a good and sufficient title, and the certificate of two reputable land holders, under oath, certifying to the value of said property.

Examination by Commissioner; fees

(3161) § **2.** No policy shall be issued until a certificate from the Commissioner has been obtained, authorizing such company to issue policies. The said Commissioner shall examine the capital, and the majority of the directors shall make oath that the money has been paid in by the stockholders towards payment of their respective shares, and not for any other purpose, and that it is intended that the same shall remain as the capital of the company, to be invested as required by the laws of this Territory. Every insurance company incorporated in this Territory, shall pay to said Commissioner, for the examination required by this section, the sum of fifty dollars.

Section one applies to foreign companies.

(3162) § **3.** It shall not be lawful for any person to act, within this Territory, as agent or otherwise, in receiving or procuring applications for life insurance, or in any manner to aid in transacting the business of life insurance, referred to in the first section of this act, for any company or association incorporated by or or-

ganized under the laws of any other territorial or state government, unless such company has conformed in this Territory, to the same requirements in regard to capital, that are imposed by section one of this act, upon companies in this Territory, or in lieu thereof, has actual assets to the amount of at least one hundred thousand dollars, invested in the same manner as is prescribed in regard to capital in section one of this act.

Who to choose directors in mutual companies.

(3163) § **4**. The subscribers, or holders of guarantee stock in a life insurance company, organized on the mutual or stock and mutual plan, shall choose the first board of directors, and at all subsequent elections they shall choose one-half of the directors, and the holders of mutual policies the other half, until the redemption of the guaranty stock, when the holders of mutual policies shall elect all the directors.

Annual statement.

(3164) § **5**. Every life insurance company incorporated in this Territory, or doing business in this Territory, shall, on or before the first day of of March in each year, transmit to the Commissioner of Insurance, and file in his office a statement of its business standing and affairs, in the form prescribed or authorized by law, and adapted to the business done by such company, signed and sworn to by the president or vice-president and secretary, and made out for the year ending on the preceding thirty-first day of December.

The form ior life insurance companies.

(3165) § **6**. The form for life insurance companies shall be as follows: *First*. Name of the company. *Second*. When chartered. *Third*. For what purpose. *Fourth*. Where located. *Fifth*. State in full the assets of the company. *Sixth*. Number of shares owned in any bank; state par value, cost and market value per share. *Seventh*. Number of shares owned in any railroad, stating the corporate name of each and the amount invested in each at cost, on its books; state the par value, and the market value of each share. *Eighth*. Amount owned in railroad bonds; state par value, cost and market value per share. *Ninth*. Amount invested in real estate, at cost on the books of the company. *Tenth*. Amount loaned on mortgages of real estate, and estimated value of said real estate. *Eleventh*. Amount loaned on notes secured by collaterals of personal property. *Twelfth*. Amount loaned on notes without collaterals. *Thirteenth*. State in full all other investments. *Fourteenth*. How much included in the forgoing statement of assets consists of premium notes on policies not returned as now in force. *Fifteenth*. Number, date, kind and amount of each outstanding policy, and age of the insured, excepting such policies as are subject to a valuation by the proper officer in some other state, which shall be shown by certificate from the insurance department of such state. *Sixteenth*. Number and amount of each class or kind of policies which have within the year ceased to be in force; how terminated; what has been paid to the legal holders of policies. *Seventeenth*. Amount of losses ascertained and unpaid. *Eighteenth*. Amount of losses claimed against the company, whether acknowledged as due or not by the company. *Nineteenth*. Amount due from the company on its declared, promised or acknowledged indebtedness,

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or other claims, including dividends, bonuses on distribution of surplus, or as profits. *Twentieth.* Amount received for premiums the past year. *Twenty-first.* Amount received for premiums in cash. *Twenty-second.* Amount received for premiums in promissory notes or securities. *Twenty-third.* Amount received for interest the past year. *Twenty-fourth.* Amount paid for interest the past year. *Twenty-fifth.* Amount of guaranty funds, and state particularly whether the same are in cash or subscription notes. *Twenty-sixth.* How are dividends, distributions of surplus funds, bonuses or estimated profits paid, whether in cash, scrip or otherwise on credit, and whether on demand; or, if on credit, for what length of time, and whether payable at a specific time or indefinitely, at the discretion of the company. *Twenty-Seventh.* Amount paid for the expenses, taxes and commission the past year classified.

Foreign companies; statement of.

(3166) § **7**. All life insurance companies, chartered or organized in any other state of the United States, or beyond the limits of the United States, and doing business in this Territory, shall make an annual statement of their condition and affairs to the Commissioner of the Insurance department in the same manner and in the same form as similar companies organized under the laws of this Territory. The Commissioner shall have authority to extend the time for filing such statement, for reasons which he shall deem good and sufficient, whether the company is organized in this Territory or elsewhere.

Companies without the United States, statement

(3167) § **8**. Life insurance companies, chartered beyond the limits of the United States, and doing business in this Territory, shall make a return of their standing on the thirty-first day of December in each year, agreeable to the form required by this act of other companies doing a similar business in this Territory, said return to be made to the Commissioner on or before the first day of April, annually, and verified and sworn to before some consul or vice-consul of the United States, by two or more of the principal officers of such insurance company.

Neglect to make returns, penalty.

(3168) § **9**. Any company doing business in this Territory, neglecting to making returns in the manner and within the time hereinbefore authorized and prescribed, shall forfeit one hundred dollars for each day's neglect; and every company that wilfully makes false statements, shall be liable to a fine of not less than five hundred, nor more than one thousand dollars. Any new business done by any company or its agents in this Territory, after neglect to make the prescribed returns, shall be deemed to be done in violation of law.

Stop issuing policies, when.

(3169) § **10**. When the actual funds of any life insurance company doing business in this Territory, are not of net value equal to the net value of its policies, according to the "combined experience" or "actuary's" rate of mortality, with interests at four per centum per annum, it shall be the duty of the Commissioner to give notice to such company and its agents to discontinue issuing new policies within this Territory, until such time as its funds have become equal to its liabilities, valuing its policies as aforesaid. Any officer or agent who, after such notice has been given, issues or delivers a new policy, from and on behalf of such com-

pany, before its funds have become equal to its liabilities as aforesaid, shall forfeit, for each offense, a sum not exceeding one thousand dollars.

Investment of funds.

(3170) § **11.** It shall be lawful for any company, organized in this Territory, to invest its funds or accumulations in the bonds of the United States, or of this Territory, or any county, city, or town in this Territory, or in any National bank, or in such other stocks and securities as may be approved by the Commissioner, or in mortgages (being first liens) on real estate being worth at east twice the amount of money loaned thereon.

Investment in other states.

(3171) § **12.** When any life insurance company, organized under the laws of this Territory, shall transact business in any other state, it may invest its surplus funds in such state in like security and under the same restrictions as in this Territory.

Inquiries by commissioner, revoke certificate.

(3172) § **13.** The Commissioner is hereby authorized and empowered to address any inquiries to any life insurance company, or to the secretary thereof, in relation to its doings or conditions, or any other matter connected with its transactions; and it shall be the duty of any such company so addressed to reply promptly, in writing, to any such inquiries; and all such companies not incorporated under the laws of this Territory, failing to answer all such inquiries, shall not be authorized to transact any business in this Territory, and their certificates of authority may be revoked and cancelled. It shall be the duty of the Commissioner to mak or cause to be made an examination of the condition and affairs of any life insurance company doing business in this Territory, whenever he shall deem it expedient to do so; and, also, whenever he shall have good reason to suspect the correctness of any annual statement, or that the affairs of any company making such statements are in an unsound condition.

Dividends by mutual companies

(3173) § **14.** Life insurances companies, doing business in this Territory, which do business upon the principle of mutual insurance, or the members of which are entitled to share in the surplus funds thereof, may make distributions of such surplus as may have accumulated, annually, or once in two, three, four, or five years, as the directors thereof may from time to time determine. In determining the amount of the surplus to be distributed, there shall be reserved an amount not less than the aggregate net value of all outstanding policies, said value being computed by the combined experience or actuary rate of mortality, with interest not exceeding four per cent.

Foreign companies, agent; service of process.

(3174) § **15.** Every life insurance company, not organized in this Territory, before doing business in this Territory, shall in writing, appoint an attorney, resident in this Territory, upon whom all lawful processes against the company may be served, with like effect, as if the company existed in this Territory, and said writing, or power of attorney, shall stipulate and agree, on the part of the company making the same, that any lawful process against said company which is served on said attorney, shall be of the same legal force and validity as if served on said company. A copy of the writing, duly certified and authenticated, shall be filed in the office of the commissioner, and copies certified by him shall

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be sufficient evidence. This agency shall be continued while any liability remains outstanding against the company in this Territory, and the power shall not be revoked until the same power is given to another, and a like copy filed as aforesaid. Service upon said attorney shall be deemed sufficient service upon the company.

Territorial treasurer to receive deposits, income.

(3175) § **16.** The Treasurer of the Territory, in his official capacity, shall take and hold on deposit the securities of any life insurance company incorporated under the laws of this Territory, which are deposited by any such company for the purpose of securing policy holders, and complying with the laws of any state, in order to enable such company to transact business in such state The company depositing such securities, shall have the right to receive the income thereof, and at any time to exchange the same, according to the laws of the state in which they may be doing business.

Valuing policies in special cases

(3176) § **17.** If any life insurance compauy, organized in this Territory, or in any other state of the United States, or in any foreign country, whose policies are not valued by the insurance department or proper officers of any other state, shall transact business in this Territory, it shall be the duty of the Commissioner to calculate the existing value of all outstanding policies of such company; and every such company shall pay, annually, to the Commissioner of Insurance of this Territory, by way of compensation for the valuation of its policies, three cents on every one thousand dollars insured by it on lives.

Life companies not to insure what.

(3177) § **18.** No life insurance company organized under the laws of this Territory, shall issue policies insuring fire or marine or accident or live stock risks, nor do any banking business.

Rights of married women, may insure life of husband

(3178) § **19.** It shall be lawful for any married woman, by herself, and in her own name, or in the name of any third person, with his assent as her trustee, to cause to be insured, for her sole use, the life of her husband, for any definite period or for the term of his natural life and in case of her surviving such period or term, the sum or net amount of the insurance becoming due and payable by the terms of the insurance, shall be payable to her, to, and for her own use, free from the claims of the representatives of her husband or of any of his creditors: *Provided, however*, That if the premium of such policy is paid by any person with intent to defraud his creditors, an amount equal to the premium so paid, with interest thereon, shall inure to the benefit of said creditors, subject however, to the statute of limitations. The amount of the insurance may be made payable, in case of the death of the wife, before the period at which it becomes due, to his, or their children, for their use, as shall be provided in the policy of the insurance, and their guardian if under age, and shall be exempt from execution.

Conditional relations between state laws.

(3179) § **20.** Whenever the existing or future laws of any other state of the United States shall require of life insurance companies, incorporated by or organized under the laws of this Territory, and having agencies in such other state, or of the agents thereof, any deposits of securities in such state for the protection of policy holders or otherwise, or any payment for taxes, fines penalties, certificates of authority, license fees or

otherwise, greater than the amount required for such purposes from similar companies of other states by the then existing laws of this Territory, then, and in every such case, all life insurance companies of such states, establishing or having heretofore established an agency or agencies in this Territory, shall be and are hereby required to make the same deposit for a like purpose, with the Territorial Treasurer of this Territory, and to pay to the Commissioner, for taxes, fines, penalties, certificates of authority, license fees or any other obligations, an amount equal to the amount of such charges and payments imposed by the laws of such other state upon the companies of this Territory and the agents thereof.

Foreign companies, deposit of charter, etc.

(3180) § **21**. Every life insurance company, not organized under the laws of this Territory, shall, before doing business in this Territory, deposit with the Commissioner a copy of the charter of the company, and a statement signed and sworn to by the president or vice-president and secretary, in the form prescribed or authorized for the annual statement adapted to the business done by such company.

To exhibit name or style of company, etc.

(3181) § **22**. Every person, acting for a life insurance company not incorporated in this Territory, shall exhibit in conspicuous letters, on the sign designating his place of business, the name of the state under whose authority the company he represents has been incorporated; and said company and agents, shall also, have printed in large type the name of said state upon all policies issued to the citizens of this Territory, and on all placards, pamphlets and circulars published, issued or circulated in this Territory, by them or him, relating to the business of said company.

Who are agents for foreign companies

(3182) § **23**. Whoever solicits insurance on behalf of any life insurance company, not chartered by, and not established within this Territory, or transmits, for any person other than himself, an application for life insurance, or a policy of life insurance, to or from such company, or advertises that he will receive or transmit the same, shall be held to be an agent of such company to all intents and purposes, and subject to all the duties. requisitions, liabilities and penalties set forth in the laws of this Territory, relating to life insurance companies not incorporated by the Legislature thereof.

Penalty.

(3183) § **24**. Any agent making insurance in violation of any law of this Territory regulating life insurance companies, shall forfeit for each offense, a sum not exceeding five hundred dollars

Commissioner's fees.

(3184) § **25**. For filing the annual statement required in the office of the Commissioner, if incorporated in this Territory, the said Commissioner shall be paid ten dollars; foreign corporations the sum of fifty dollars; for each agent's certificate of authority two dollars; for every copy of a paper filed in the Commissioner's office, twenty cents per folio, and for affixing the seal of said office to such copy, and certifying the same, one dollar; and for examining the affairs of any company, when deemed necessary, the expenses incurred therein, shall be paid to the said Commis-

sioner by the company: *Provided*, That forty per cent of all the fees collected by the Commissiouer of insurance under the provisions of this act, shall be credited to said Commissioner, and the remaining sixty per cent be paid into the treasury of the Territory.

Publishing biennial statement.

(3185) § **26.** The Commissioner shall, biennially, prepare and print in a single document the information contained in the statements made under this act, and shall communicate the same to the general assembly. He shall also cause the biennial statements required to be filed by this act to be published not less than one week in two daily newspapers of general circulation, published in this Territory.

(3186) § **27.** An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

Insurance upon life.

(3187) § **28.** Every person has an insurable interest in the life and health:

First. Of himself.

Insurance interest.

Second. Of any person on whom he depends wholly or in part for education or support.

Third. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,

Fourth. Of any person upon whose life any estate or interest, vested in him, depends.

(3188) § **29.** A policy of insurance upon life or health may pass by transfer, will, or succession, to any peson, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

Assignor of policy of life insurance.

(3189) § **30.** Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required.

Notice of the transfer.

(3190) § **31.** Unless the interest of a person insured is susceptible of exact pecuniary measurments the measure of idemnity under a policy of insurance upon life or health is the sum fixed in the policy.

Measure of indemnity.

CHAPTER XLV.—JURORS.

SECTION.
1. Qualifications of grand and petit jurors.
2. Petit jury, how summoned.
3. Grand jury, how summoned.
4. Jurors, when to appear, leave of absence.
5. Petit jurors exhausted, additional panel.
6. Oath by judges of election; jurors apportioned by voting precincts and drawn; technicalities and exemptions.
7. Contempt of court, fine and imprisonment.
8. Jurors chosen by lot.
9. Venire issued.
10. Venire served and return made.
11. Perjury; land cases; grand juror; challenge; realty contestants.
12. Perjury; land cases; petit juror; challenge.

AN ACT providing for grand and petit juries and prescribing the manner of forming and summoning the same.

[Took effect December 9, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

(3191) § **1.** All male citizens residing in any of the counties of this Territory, having the qualifications of electors. and being over the age of twenty-one years, and of sound mind and discretion and not judges or the Supreme Court or district courts, clerks of the Supreme or district courts, sheriffs, coroners, licensed attorneys engaged in practice, or any person licensed to sell liquor, or an habitual drunkard, or jailors, and not subject to any bodily infirmity amounting to disability. and who have not been convicted of a criminal offence punishable by imprisonment in the penitentiary, and not subject to disability for the commission of any offence which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and petit juries within their counties or subdivisions respectively: *Provided.* That persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, registers of deeds, practicing physicians, teachers in public schools, postmasters and carriers of the United States mail, if they claim their exemption, shall not be compelled to serve as jurors: *And provided further*, That all members in good standing of any regularly organized fire company may be excused from serving as jurors in the courts of this Territory. Grand and petit jurors.

(3192) § **2.** No jury shall be summoned except by order of the judge of the district court, who shall issue an order to the clerk of said court that a jury shall be summoned, and in such order shall specify the number of petit jurors that shall be summoned, and time and place where they shall appear; and such order may be issued at any time within thirty days before the first day of the term of the district court, or at any time during the term of said court. Petit jury, how summoned.

(3193) § **3.** A grand jury shall be summoned in the same manner provided for summoning petit juries; *Provided*, That in all Grand jury, how summoned.

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cases a grand jury shall consist of not less than twelve nor more than sixteen jurors.

Appearance and departure.

(3194) § **4.** Each grand and petit juror summoned shall appear before the court on the day and at the hour specified in the summons, and shall not depart without leave of court.

Additional panel.

(3195) § **5.** Whenever the panel of petit jurors shall be exhausted by the challenges of either party in any action, the judge of the court shall order the sheriff, deputy sheriff or coroner to summon without delay, a sufficient number of persons possessing the qualifications in this act provided for jurors, to complete the number requisite for a jury in that particular case.

Oath by judges of election.

(3196) § **6.** It shall be the duty of the county clerk at the time the poll books are prepared, to have printed thereon, in blank form, the oath to the following effect:

We, the undersigned judges of election in and for precinct No. ....., do solemnly swear that when the polls are closed, and at the time that we make a poll of the votes cast, we will examine the list of names on the poll books and therefrom, we will select.....number of names, and return the same to the county clerk to serve as jurors, that in making such selection we will select only such persons as are to us known to be of good moral character, of sound judgment and of unquestionable integrity, and that we will not select any person in the habit of becoming intoxicated, that has been convicted of any felony or who is engaged in the sale of intoxicating liquors, or who is known to be a participant in or engaged in any unlawful business, or whom we believe could be bribed or who are of doubtful qualifications as jurors, so help us God.

.....
.....
.....

Subscribed and sworn to before me this..... day of....., A. D., 189....

.....

Which oath shall be taken before the same person administering the oath to the judges of election to properly conduct the same It shall be the duty of the county clerk, before said poll pooks are delivered, to estimate the number of jurors that will be required to be drawn from each election precinct to make up the number of three hundred and fifty, in the ratio of that the vote cast in any election precinct at the last general election bears to the whole vote cast in the county, and shall order the judges of election to return that number; if however, the election precincts be changed, then the county clerk shall estimate the number of jurors to be drawn from the precinct newly established as best he can by taking into consideration the Territory embraced and the number of votes cast in the precinct or precincts of which the new precinct formed a part. The clerk shall fill in the blank oath on the poll books the number of jurors so ordered to be drawn from each precinct. When the election is over and the ballots have been counted, the judges of election shall examine the lists of names on the poll books and under their oaths select the number of persons designated

by the clerk and possessing the qualifications required by this act to serve as jurors, and shall make a list of the same and shall sign it under their hand and return the same to the county clerk. When all of said jury lists are so received, it shall be the duty of the county clerk to write out all the names so returned on separate slips of paper, and place them in a box with lock and key, and keep the same locked, and from the names so placed in this box, the grand and petit jurors shall be drawn. Within ten days before the sitting of any term of the district or probate court the judges shall certify to the district clerk the number of persons desired for grand or petit jurors or both. Thereupon the clerk of the district court shall summon the sheriff or any of his deputies, and the county clerk, and shall take the box containing the names of the jurors so returned, and thoroughly shake the same, the box shall then be opened in the presence of all three of said officers and placed in such a position that they cannot see into it, and each officer shall then in turn draw a name therefrom and make a record thereof, until the required number of grand and petit jurors are drawn. The names first drawn shall constitute the grand jury and the latter the petit jury for the term to which they are drawn, and each slip containing the name drawn from the box shall be destroyed. If from any cause the judges of election should fail to make returns of jurors from their precinct, it shall be the duty of the county commissioners to take the poll books returned from that precinct, and to select the number of persons required to serve as jurors from that precinct, and in making sueh selections shall exercise the same care required herein of judges of elections, and the list so selected by the county commissioners shall be received in lieu of the one required to be made by the judges of election: *Provided, however*, That no indictment shall be set aside for the reason that such indictment was found by a grand jury drawn from a list containing more or less than three hundred and fifty names: *Provided, further*, That any person bound to serve as a juror may when voting, notify the judges of election of his exemption, and such person shall not then be returned as a juror. It shall be the duty of the county clerks to prepare and have printed, a sheet containing the law with regard to the qualifications of jurors and the directions to the judges of election as a drawing the same, and have it attached to the face of the poll books before the same are sent from his office to the precincts.

Contempt of court

(3197) § **7.** If any person summoned to appear as grand juror or petit juror fails, refuses or neglects to appear, such person shall be considered guiltyof contempt of the court, and may be fined by the court in any sum not less than five nor more than twenty dollars; and if any person, when a second order of attachment is issued, neglects or refuses to appear, such person may be fined as above provided and imprisoned by the court not longer than ten days in the county jail, and if the judges of election or county commissioners of any county wilfully neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, such person so offending may be fined by the court not less than five nor more than twenty dollars; and if the clerk of the district

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court, or deputy clerk or sheriff, deputy sheriff or coroner, so neglect or fail to perform the duties imposed by this act, the person so offending shall be considered guilty of contempt of court, and may be fined by the court not less than five nor more than fifty dollars, and if guilty of gross misconduct in office and contempt in disregarding the provisions of this act, may be imprisoned by the court not longer than thirty days in the county jail.

Jurors chosen by lot.

(3198) § **8.** The clerk of the district court or his deputy, and the sheriff or his deputy, or if there be no sheriff, or in case of his disability or suspension from office, the county clerk or his deputy, shall immediately upon the receipt of the order of directing a jury to be summoned, meet together and draw by lot out of the box or receptacle wherein shall be kept the tickets aforesaid, the number of jurors directeted to be summoned by the judge of the district court. The jurors first drawn, to the number required in the order shall serve as grand jurors, if a grand jury shall be ordered to be summoned, and the remainder drawn in compliance with said order shall serve as petit jurors.

Venire issued.

(3199) § **9.** The clerk shall on the day of drawing as herein provided, issue a venire or venires, as the case may be, directed to the proper officer of the county, commanding such officer to summon the persons whose names are drawn to appear before the district court at the hour, day and place designated in the order of the judge. A separate venire shall issue for the grand jury when such jury shall be ordered.

Venire served

(3200) § **10.** The officer receiving such venire shall forthwith serve the same by reading or delivering a true copy thereof to each person therein named, or by leaving such a copy at its usual place of residence, such copy need contain only the name of the juror served, and shall make return thereof, with his proceedings endorsed thereon, to the clerk as soon as he has executed the same.

AN ACT defining the qualifications of petit jurors and grand jurors in certain perjury cases.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Grand juror challenged.

(3201) § **11.** In all cases where at a time a grand jury is being impanelled, it is made to appear to the court that any person has been bound over or will be presented for indictment for the crime of perjury committed in any matter, where the right to acquire or hold any lands or lots from the United States is in controversy, it shall be competent to challenge any grand juror on the ground that he was within the past five years engaged in a contest in this Territory in regard to public lands in the United States land office, or for a town lot before a townsite commission. and when it so appears the challenge shall be sustained.

Petit juror challenged

(3202) § **12.** When a petit jury is being impanelled for the trial of a person charged with the crime of perjury committed in

any matter wherin the right to acquire or hold any land or lots from the United States is in controversy, it may be made to appear that any juror is or has been within the past five years engaged in a contest for public lands within this Territory before the United States land office or for a lot before a townsite commission, it shall be good ground of challenge, and the juror shall be excused.

CHAPTER XLVI.—LEGISLATURE.

SECTION.
1. Legislative power, how vested.
2. Members of.
3 Qualifications of members.
4. Who not eligible.
5. Legislative districts.
6. Members how chosen.
7. Sessions regular
8 Assemblies, by whom called to order; officers.
9 Rules, limit of.
10 Contests, how adjusted.
11. Judge of election of members.
12. Salaries of officers and members.
13. President and Speaker, tenure of office, other officers.
14 Members not subject to arrest, when.
15. Adjournment, how limited.
16 House journals to be kept.
17 Reading of bills.
18 Bills shall contain but one subject.
19 Amendments and repeal.
20 Enacting clause.
21. Vote on final passage.
22. Bills, how signed; record of.
23 Committees; officers, how elected.
24. Chief clerk's duties.
25. Sergeant at-arms, duties.

SECTION.
26. Quorum.
27. Expulsion of members.
28. Chairman of investigating committee, powers of.
29. Contempt.
30. Contempt, how tried.
31. Contempt, punishment for.
32. Officers protem.
33. Witness fees.
34. Construction of "session."
35. Restoration of furniture.
36. Assistant clerks elected.
37. First assistant enrolling and engrossing clerks appointed.
38. Additional enrolling and engrossing clerks.
39. Sergeant at-arms.
40. Committee clerks.
41. Additional committee clerks.
42. Door keepers.
43. Janitors.
44 Pages.
45. Expenses, how met.
46. Members, when exempt from arrest etc.

AN ACT to provide for the organization of the Legislative Assembly of the Territory of Oklahoma, defining its powers and duties and declaring the privileges of its member

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

(3203) § **1.** All legislative power, granted to the Territory of Oklahoma by the laws of the United States, shall be vested in the Governor, and the Legislative Assembly, which shall consist of a Council and House of Representatives. Legislative powers, how vested,

(3204) § **2.** The Council shall consist of thirteen members, and the House of Representatives shall consist of twenty-six members, until otherwise provided by act of Congress. Members of.

(3205) § **3.** No person shall be a member of the Legislative Assembly who shall not have attained the age of twenty-one years; [he must] be a male citizen of the United States. and of the Territory of Oklahoma, and have been an inhabitant of the Territory for at least one year before he is chosen, and shall have resided for the last six months previous to his election in the district from Qualification of members.

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which he is chosen. No person previously convicted of a felony shall be eligible to either house.

Who not eligible.

(3206) § **4.** No person holding office under the authority of the United States, or any lucrative office under the authority of the Territory, shall be eligible to a seat in the Legislature, but this prohibition shall not exclude precinct or township officers, or officers of the militia, or notaries public, or United States commissioners. No person interested in a contract with, or holding an unadjusted claim against the Territory, shall be eligible to a seat in the Legislative Assembly. If any member of the Legislative Assembly during his term of office accepts any one of the offices above defined, or becomes interested in any contract or claim as above stated, it shall work a forfeiture of his office as a legislator.

Legislative districts.

(3207) § **5.** The districts from which members of the Council and House of Representatives are chosen, shall be as provided by the law on apportionment.

Members, how chosen.

(3208) § **6.** The members of both branches of the Legislative Assembly shall be chosen at the general election in one thousand eight hundred and ninety-two, and biennially thereafter, and shall hold their respective offices for two years, from January first following their election. If a member fail to qualify without reasonable excuse, or remove from the district for which he was elected, during the term for which he was chosen, it shall work a vacation of his office.

Sessions, regular.

(3209) § **7.** The regular session of the Legislative Assembiy, shall commence at two o'clock p. m. on the second Tuesday in January next ensuing the election of members, and shall be holden at the seat of Government, unless in time of pestilence or danger, the Governor shall convene them at some other place.

Assemblies, by whom called together; officers

(3210) § **8.** When assembled, the Council and House of Representatives shall be called to order by any person claiming to be a member of that body; when those claiming to be members shall elect a temporary presiding officer, and temporary clerk, whereupon the certificates held by persons claiming to be elected to either body, shall be filed with the temporary clerk, and he shall make a roll therefrom; from the roll so made, a committee of five shall be chosen by ballot, not more than three of whom shall be from the same political party; to whom all certificates shall be submitted, and they shall report to the body the names of the persons appearing to the members; thereupon the Secretary of this Territory, or any judge of the Supreme Court, shall administer to the members so appearing to have been elected the following oath: "You do solemnly swear that you will support the Constitution of the United States and the Organic Act of the Territory of Oklahoma, and that as a member of this House of Representatives (or this Council as the case may be), you will not propose or assent to any bill, vote, or resolution, which shall appear to you iujurious to the people, nor do or consent to any act or thing whatever that will have a tendency to lessen or abridge their rights and privileges as declared by the Constitution of the United States and the Organic Act of this Territory, but will, in all things, conduct yourself as a faithful, honest representative and guardian of the people, accord-

ing to the best of your judgment and ability. So help you God." Thereupon the respective bodies, shall permanently organize by electing the following officers: In the Council, a president, one chief clerk, one engrossing clerk, who shall also act as enrolling clerk, one sergeant-at-arms, who shall also act as door-keeper, one messenger, one watchman, and one chaplain; in the House of Representatives, a speaker, and one chief clerk, one engrossing clerk, who shall act as enrolling clerk, one sergeant-at-arms, who shall also act as door-keeper, one messenger, one watchman, and one chaplain. Each house may employ such subordinate officers as it may by special act provide, which special act shall expire at the end of each session, unless otherwise expressed in the act; *Provided however*, That the Council and House shall proceed to elect for their respective houses a president *pro tem* and speaker *pro tem* whose actions shall, if the president or speaker be absent or unable to act, have the same validity as those of the president or speaker of the house, as the case may be.

Rules, limit of.

(3211) § **9.** When so organized, each house may by rule, provide its methods of procedure, as ordinarily done by legislative bodies, but no rule shall be adopted that will prevent a majority of all the members elected to any house from controlling that body, except as provided in section seventeen of this act.

Contests, how adjusted.

(3212) § **10.** If there be contests for seats in either house, the contestants must prepare their cases as provided by law, and file with the clerk their evidence within five days after the House to which they claim to have been elected, is organized, and that body shall consider such contest in preference to all other matter until decided, unless the body by a three-fourths vote, on call of the yeas and nays, order some other matter to be considered, or the time to be extended. Only the one adjudged to be entitled to the seat shall draw the salary allowed to a member, and no member's salary shall be paid to him until after the contest is decided.

Judge of election of members.

(3213) § **11.** Each house shall be the sole judge of the election returns and qualification of its members.

Salaries of officers and members

(3214) § **12.** The salary of the members and, the officers named in section eight, shall be as provided by the laws of the United States, and shall be paid under such rules and regulations as may be prescribed by the authority thereof. The salaries of other subordinate officers shall be as provided for by the special act passed at each session, and the presiding officers of each of the houses, shall each month, and at the close of the session, certify to the Auditing Officer of the Territory the names of the employees of their respective houses, the number of days they have each been employed, and the amount due to each of them. Thereupon, such Auditing Officer shall draw his warrant upon the Treasurer of the Territory in the manner and form as provided by law, for the amount so certified to him as being due, and deliver the same to the employee, and retain in his possession the certificate signed by the presiding officer, and file and retain the same. Such warrant shall be paid out of any money in the Territorial treasury not otherwise appropriated.

President and Speaker, tenure of office; other officers.

(3215) § **13.** The president of the Council, and speaker of the House of Representatives, shall hold their offices until the first day of January preceding the regular session of the next Legislative Assembly. All other officers elected by either house, shall hold their offices only during the session at which they were chosen: *Provided, however*, That any officer of any house may be removed by a majority vote of all the members of the house by which he was chosen.

Members not subject to arrest, when.

(3216) § **14.** For any speech or debate in either house, the members shall not be questioned elsewhere. No member of the Legislature shall, during any session thereof, or while going to or from the sam, be served with any subpœna or other civil process; nor shall he be bound if served to obey the same; nor shall any civil action pending against him be prosecuted in any manner, nor shall he be arrested for any offense except felony, or breach of the peace committed during the session. The officers elected in either house shall, while holding their offices, be entitled to the same immunities as the members of that body.

Adjournment, how limited

(3217) § **15.** When assembled, neither house shall without the consent of the other, adjourn to any other place, nor for a longer period than two days.

House journals to be kept.

(3218) § **16.** When so organized each house shall keep a journal of its proceedings, which shall be published as may be provided by law. No law shall be enacted except by bill, and a majority of all the members elected to each house, voting in the affirmative, shall be necessary to pass any bills or resolutions.

Reading of bills

(3219) § **17.** Every bill shall be read on three separate days in each house, the two first readings may be by the title, but the reading of the bill by sections, on its final passage shall in no case be dispensed with: *Provided, however*, That either house in case of emergency, may by a two-thirds vote of the members present and not less than a majority of all the members elected, (entered on the journal) suspend the operation of this section and at once pass the bill.

Bills shall contain but one subject

(3220) § **18.** No bill shall contain more than one subject and matters properly connected with it; which subject shall be clearly expressed in the title.

Amendments and repeal.

(3221) § **19.** Bills may be amended or substituted in either house, but no existing law, or any section thereof, shall be amended, unless the bill so amending it shall clearly designate the act or section so amended, and shall contain the entire act or section, as it will read when amended, and the act or section when so amended, shall stand repealed.

Enacting clause.

(3222) § **20.** The enacting clause of the bills shall be "Be it enacted by the Legislative Assembly of the Territory of Oklahoma."

Vote on final passage

(3223) § **21.** The vote on the final passage of any bill or resolution, in either house, shall be by yeas and nays, which shall be entered on the journal. Any other vote taken in either house, shall, on the demand, of any member, be taken by yea and nay, and be entered on the journal.

(3224) § **22**. When any bill shall have passed both houses, it shall be signed first, by the President of the Council, and then by the speaker of the House of Representatives, in the presence of the respective houses while in session; each officer, before signing the bill, shall state to the house what bill it is, and make inquiry of the committee on enrolled bills as to the correctness of the bill in the form presented for signature; if assured by members of that committee that they have carefully inspected it, and find that it is correctly enrolled, he shall sign it; if not so assured, it shall be the duty of the presiding officer to at once have the enrolled bill carefully compared and corrected, if errors there be, and to then sign the same. When signed by the president and speaker, the bill shall at once be forwarded from the speaker to the Governor for his action thereon, and shall thereafter be acted upon as provided by the Organic Act of the Territory, and there shall be made in the journal of the House of Representatives, a record showing when each bill was forwarded to the Governor.

Bills, how signed; record of.

(3225) § **23**. Each house shall provide for such committees as it shall deem proper for the transaction of its business, and all officers and members of standing committees shall be chosen by *vive voce* vote of their respective houses, and entered on the journal, and no one shall be declared elected except by a majority of all the votes cast, and all officials shall be required to take and subscribe the same oath as is provided for other civil officers. Neither house shall transact any business other than that of its organization, until its officers are elected and sworn in. Special committees may be elected, or appointed, as the houses may direct.

Committees; officers, how elected.

(3226) § **24**. It shall be the duty of the chief clerks, to keep correct journals of the proceedings of their respective houses; to have the custody of all records, accounts, bills and other papers committed to them and at the close of each Legislative Assembly shall correctly classify, label and fold all papers in their possession pertaining to the business of the session and then deposit them for safe keeping with the Secretary of the Territory, and generally perform such duties as shall be assigned to them by their respective houses; the journals of the houses shall be deposited as may be required to permit the printing of the same, until published, when when the original shall be deposited with the Secretary of the Territory. They shall have charge and control of all assistant clerks and engrossing clerks of their respective houses and shall promptly report to their houses any inefficiency, want of attention to duties, ungentlemanly or unladylike conduct on behalf of their subordinates to be dealt with as the house may determine.

Chief clerk's duties.

(3227) § **25**. The sergeant-at-arms shall, under the direction of the presiding officers of their respective houses, keep and maintain order, and shall have general control and management of door-keepers, watchmen, messengers and janitors connected with their respective houses,, and shall see that they properly perform their duties, and shall report all delinquencies to their respective houses. They shall serve all subpœnas and warrants of

Sergeant-at-arms, duties.

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arrest issued by their respective houses, or any committee thereof, in like manner as such writs are served by sheriffs within the Territory; and authority is by this act conferred upon them so to do.

Quorum

(3228) § **26**. A majority of all the members elected to each house shall, in their respective houses, constitute a quorum; but a lesser numbermay adjourn from day to day.

Expulsion of members

(3229) § **27**. Either house may by a two-thirds vote, expel a member for good cause shown, but no member shall be expelled for any act, not transpiring in the presence of the house, until the same shall have been investigated by the house, when sitting for that purpose. When so sitting the chief officer of the house shall issue subpœnas, and compel the attendance of witnesses and the production of any desired paper or record, and on failure to obey any such subpœna, when served as in civil cases, or for refusing to testify fully, the person so subpœnaed shall be adjudged guilty of contempt, and be punished accordingly. No witness shall be excused from answering any question propounded to him which does not tend to criminate him, or from producing any record or paper whatsoever, but the evidence so taken, shall not be used against him in any civil or criminal proceeding. No member shall be twice expelled for the same offense. The expulsion of a member shall create a vacancy, and there shall be elected another member as may be provided by law.

Chairman of investigating committee; powers of.

(3230) § **28**. The chairman of any committee of either house to which is intrusted by the house the investigation of any matter, may, in like manner, issue subpœnas, cause them to be served with like force and effect as provided in the last section, and may, in like manner, administer oaths, examine witnesses, and they shall, in like manner, for refusal to obey or testify fully, be, by the house, adjudged guilty and punished for contempt.

Contempt.

(3231) § **29**. The following acts shall constitute contempt:

First. Arresting a member or officer of the house, or procuring such member or officer to be arrested in violation of his privileges.

Second. Disorderly conduct in the immediate view of the house, and directly tending to interrupt its proceedings.

Third. Refusing to attend and be examined as a witness, either before the house or a committee, or before any person authorized to take the testimony in legislative proceedings.

Fourth. Giving, or offering a bribe to a member, or of attempting, by menace or other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent his giving the same.

Fifth. Assaulting or threatening to assault a member, or threatening to do any act to the person or property of a member for anything by him said or done in either house as a member thereof.

Sixth. Assaulting or preventing any person going to either house, or its committees by order thereof.

Seventh. Knowingly rescuing or attempting to rescue any person arrested by order of either house.

Eight. Knowingly impeding any officer of either house in the discharge of his duties as such officer.

Ninth. A member in the house refusing to vote when his name is called, unless excused by a majority vote of the house.

Contempt, how tried.

(3232) § **30**. Contempt shall be summarily tried by the house against which it is directed, and if the accused be adjudged guilty, there shall be an order to that effect entered upon the journal stating the grounds thereof, and fixing the punishment to be inflicted.

Contempt, punishment for.

(3233) § **31**. Punishment for contempt, shall be by fine or imprisonment or both, as the house may direct. Imprisonment shall be effected by a warrant under the hands of the presiding officer of the house ordering it, countersigned by the chief clerk, running in the name of the Territory and directed to the sergeant-at-arms or sheriff or jailor of the proper county. Under such warrant, the proper officer will be authorized to commit and detain the person; but imprisonment for contempt shall not extend beyond the session at which it is ordered, and shall be in the jail of the county in which the Legislative Assembly is then sitting; or if there be no such jail, then in the jail of the next nearest county having a jail. Fines shall be collected by similar warrant directed to any proper officer of any county in which the offender has property, and executed in the same manner as executions issued for fines from courts of record, and the proceeds shall be paid into the Territorial treasury. The sergeant-at-arms, shall see that any one sentenced to imprisonment is duly delivered to the proper jailor: *Provided*, That a member of the Legislative Assembly shall only be punished by censure or expulsion.

Officers pro-tem

(3234) § **32**. In the absence of any officer of either house, or in the event of disability to act, an officer pro tem shall be elected, and when so elected, shall for the time being have all the power of the officer regularly elected.

Witness fees.

(3235) § **33**. Witnesses shall be entitled to the same compensation for attendance before either house, or before a committee, as before the district court, but shall not have the right to demand their fees in advance. Such fees shall be paid out of the Territorial treasury. The chief officer of the house calling such witness shall draw an order in his favor and deliver the same to the witness, and on presentation thereof to the auditing officer for the Territory, that officer shall retain and preserve the order, and issue to the witness a warrant on the Territorial Treasurer, which shall be paid as in other cases. All costs of arresting, detaining and caring for prisoners, and subpœnaing witness, shall be paid in the same manner. Such costs, in all cases, shall be the same as allowed by law for like services when performed in the district court.

Construction of "session."

(3236) § **34**. The word "session" as applied to the Legislative Assembly, and as used in this chapter shall be held to mean the time between the convening and final adjournment.

Restoration of furniture.

(3237) § **35**. At the end of each session, each member shall deposit with the Secretary of the Territory, all books, documents, papers, and other property of the Territory, that may have come

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to his hauds as a legislator, and shall so deposit them before the last installment of his salary is paid to him, and on a failure so to do, the cost thereof shall be deducted from his salary. All such property of the Territory, shall be delivered to the various members by the Secretary of the Territory, and a receipt taken therefor at the time it is delivered, which receipt shall show the price at which the property is charged to the member. Stationery supplies shall not be so receipted for.

AN ACT to provide additional officers for the Legislative Assembly of Oklahoma Territory. prescribing the duties and fixing the compensation thereof.

[Took effect September 27 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

Assistant clerks

(3238) § **36**. There shall be elected one assistant clerk for each branch of the Legislative Assembly, who shall receive the sum of four dollars per day for services during the session thereof, to be audited and paid out of the Territorial treasury upon an account certified by the respective presiding officers of the two houses of said Assembly. Said clerks so employed under the provisions of this section shall be skilled stenographers and typewriters, and shall be employed first in doing the work of the committees, other than the judiciary and ways and means committees of the respective houses, for which they are appointed and when not thus employed in committee work shall perform such clerical duties about their respective houses as may be ordered by the chief clerk: *Provided, however*, That in the House of Representatives, such clerk need not be a skilled stenographer, and the duties of such assistants clerk for the House of Representatives shall be to assist the chief clerk and to act as general reading clerk:

First assistant enrolling and engrossing clerks

(3239) § **37**. The President of the Council, on behalf of the Council, and the Speaker of the House of Representatives, on behalf of the House, are authorized to appoint by and with the advice and consent of their respective houses, when deemed necessary by the Council or House, as the case may be, a first assistant enrolling and engrossing clerk, who shall receive as compensation for his services the sum of four dollars per day for such time as he is actually and neccssarily employed, to be audited and paid out of the Territorial treasury upon allowance of their account by the said President and Speaker respectively.

Additional enrolling and engrossing clerks

(3240) § **38**. The President of the Council, also the Speaker of the House, are each hereby authorized to employ for their respective bodies, such additional engrossing and enrolling clerks for both branches of the Legislature as are in their judgment deemed necessary for a proper fulfillment of the duties required of the committees of each house, and there is hereby appropriated out of any funds in the treasury a sum of money sufficient to cover the expenses of such additional service.

Sergeants-at-arms.

(3241) § **39**. The President of the Council when deemed necessary by the Council, shall appoint one assistant sergeant-at-arms for that body; and the Speaker of the House, when deemed

necessary by the House, shall appoint an assistant sergeant-at-arms for that body. The assistant sergeants-at-arms shall receive compensation for such time as they are necessarily employed. They shall discharge the several duties of the sergeant-at-arms in case of his absence or inability to serve, and shall receive as compensation four dollars per day to be paid out of the Territorial treasury.

Committee clerks.

(3242) § **40**. There shall be appointed by the chairman of the judiciary committee of each house, one clerk for each of their respective committees, and by the chairman of the ways and means committee of each house, by and with the consent of their respective houses, one clerk for each of their respective committees. Each of said clerks shall be a skilled stenographer and type-writer. whose duty shall be to act as clerk of the committee for which he is appointed. The *per diem* of such elerks shall be four dollars to be paid out of the Territorial treasury upon an account certified by the chairman of each of said committees, respectively, which account shall be reported to the Council or House, as the case may be, and said accounts, if shown to be correct, shall be approved by the Speaker for clerks for the House committees, and by the President of the Council for clerks of the Council committees, the chairman of each of said committees may discharge the clerks of his committee for inefficiency, inattention to business or ungentlemanly or unlady-like conduct, and may appoint another in their place. If in the judgment of the Council or House, stenographers be not needed, other parties may be employed.

Additional committee clerks

(3243) § **41**. The House of Representatives and Council may each provide such additional committee clerks by resolution as may be deemed necessary.

Door keepers

(3244) § **42**. There shall be appointed by the President of the Council, and the Speaker of the House of Representatives, respectively, one door keeper who shall receive as his compensation the sum of three dollars and fifty cents per day.

Janitors.

(3245) § **43**. There shall be appointed by the President of the Council, and Speaker of the House of Representatives, respectively, one janitor who shall receive a compensation of two dollars and fifty cents per day.

Pages.

(3246) § **44**. There shall be appointed by the President of the Council, and by the Speaker of the House of Representatives, [respectively], three pages, who shall each receive the sum of one dollar per day for such services, to be audited and paid out of the Territorial treasury on accounts certified by the presiding officers of the respective Houses.

Expenses, how met.

(3247) § **45**. There is hereby appropriated out of the Territorial treasury a sum sufficient to pay for the services required by this act.

Chap. 47. AN ACT to protect the members of the Legislative Assembly from arrest and service of legal process while attending the sessions of the Legislature.

[Took effect September 23, 1890]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Members, when exempt from arrrest, etc.

(3248) § **46.** That no member of the Legislative Council or House of Representatives shall be subject to service of subpœna or summons from any court, nor shall he be bound to obey the same, nor shall he be subject to arrest on any process, civil or criminal, except for treason or felony or breach of the peace, during any session of the Legislature.

CHAPTER XLVII.—LIBRARY.

AN ACT providing for a Territorial library.

[Took effect December 9, 1890]

SECTION.
1. Contents; custodian's duty.
2. Expenses, how met.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Contents; custodian's duty.

(3249) § **1.** The Territorial library, including statutes, reports documents and miscellaneous books of every nature and description belonging to said library, is hereby placed in the care and custody of the Secretary of the Territory, whose duty it shall be to provide a room for said library, and keep the same open at all reasonable hours for the benefit of the public; to label and arrange the books in a convenient manner; to collect in all books now out, and to let no book go out without first taking the receipt of the person to whom such book is delivered.

Expenses, how met.

(3250) § **2.** It shall be the duty of the Secretary of the Territory of Oklahoma, to draw his warrant on the Territorial treasury for all money paid out by the Secretary as express charges or freight on books donated and sent to the Territorial library from abroad.

CHAPTER XLVIII.—LIQUORS.

ARTICLE.
1. Intoxicating liquors.
2. Prohibits sale near Britton.

ARTICLE 1.—INTOXICATING LIQUORS.

SECTION.
1. Petition to county commissioners.
2. Notice of application.
3. Remonstrance.
4. Hearing, appeal.
5. License, form.
6. Bond.
7. Surety.
8 Selling to minors, etc.
9. Misrepresenting age.
10 Selling to insane or drunkard.
11. Disposing without license.
12. Hearing before magistrate.
13. Disposing of adulterated liquors.
14. Election days, Sundays.
15 Suit by married woman or others.
16 Maintenance of intemperate paupers.
17 Trial, evidence.
18. Suits, jurisdiction.
19. Penalty, complaint for unlawful sale.
20. Trial, destruction.
21. Punishment, costs, disposal of liquors.
22. Fines, payments.
23. Gambling prohibited.
24. License in cities.
25. Saloons open to view.
26. Sale prohibited in certain cases.
27. Penalty.
28. When prosecuting witness to pay costs.
29. Duty of officers.
30. Complaint to remove officer.
31. Vacancy, how filled.
32. Wholesalers.
33. Penalty for violations.

AN ACT to regulate the traffic in Intoxicating Liquors.

[Took effect Demceber 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Petition to county commissioners.

(3251) § **1.** The board of county commissioners of each county shall grant license for the sale of malt, spirituous and vinous liquors, upon the application by petition of thirty of the resident tax payers of the town, if the county is under township organization, and if not under township organization, when thirty of the resident tax payers of the precinct where the sale of such liquors is proposed to take place, setting forth the applicant is a man of respectable character and standing and a resident of this Territory, and praying that license may be issued to him. Such application to be filed in the office of the county clerk and upon the payment into the county treasury, the sum of two hundred dollars for each license, upon the compliance with the provisions of this act.

Notice of application.

(3252) § **2.** No action shall be taken upon said application until at least two weeks notice of the filing of the same has been given by publication in two newspapers published in said county, having the largest circulation therein or if no newspaper is published in said county by posting written or printed notices of said application in five of the most public places in the town, precinct, village or city, in which the business is to be conducted, when, if there be no objections in writing made and filed to the issuance of said licence, and the county board is in session and all other provisions of this act have been fully complied with, it shall be granted.

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Remonstrance.

(3253) § **3.** If there be any objection, protest or remonstrance filed in the office where the application is made against the issuance of said license, the county board shall appoint a day for hearing of said case and if it shall be satisfactorily proven that the applicant for license has been guilty of the violation of any of the provisions of this act within the space of one year or if any former license shall have been revoked for any misdemeanor against the laws of this Territory, then the board shall refuse to issue such license.

Hearing, appeal.

(3254 § **4.** On the hearing of any cause arising under the provisions of the last two sections, any party interested shall have process to compel the attendance of witnesses who shall have the same compensation as now provided by law in the district court to be paid by the party calling said witnesses. The testimony on said hearing shall be reduced to writing and filed in the office of the county clerk and if any party feels himself aggrieved by the decision in said case he may appeal therefrom to the district court and said testimony shall be transmitted to said district court and such appeal shall be decided by the judge of such court upon said evidence alone.

License, form.

(3255) § **5.** The license shall state the time for which it is granted, which shall not exceed one year, the place where the liquor is to be sold, and shall not be transferable; and any license granted under this chapter may be revoked by the authority issuing the same whenever the person licensed shall, upon due proof made, be convicted of a violation of any of the provisions of this act. The license be in the following form as near as practicable:

TERRITORY OF OKLAHOMA, }
COUNTY OF..... } ss.

To all who shall see these presents.

Know ye that.....having on the.....day of .....A. D., 18...., filed his petition and bond according to law and paid into the treasury the sum imposed on him as a vendor of malt, spirituous and vinous liquors, therefore the said.....is hereby authorized to sell malt, spirituous and vinous liquors at.....for.....months ending.....day.....A. D., 18.....

In testimony whereof, I.....clerk of..... have affixed the seal of said.....this.....day of..... A. D., 189....

[SEAL] .....

Clerk.

Bond.

(3256) § **6.** No person shall be licensed to sell malt, spirituous or vinous liquors by any county board or the authorities of any city or village unless he shall first give bond in the penal sum of two thousand dollars payable to the Territory of Oklahoma, with at least two good and sufficient sureties, freeholders of the county, in which the license is to be granted, to be approved by the board who may be authorized to issue the license conditioned that he will not violate any of the provisions of this act; and that he will pay all damages, fines and penalties and forfeitures which

may be adjudged against him under the provisions of this act. The board taking such bond shall examine any person offered as security upon any such bond, under oath, and require him to subscribe and swear to his statement in regard to his pecuniary ability to become such security. Any bond taken pursuant to this section may be sued upon for the use of any person or his legal representatives who may be injured by reason of the selling, or giving away any intoxicating liquors by the person licensed or by his agent or servant.

Surety

(3257) § **7.** No person who is holden as the principal or surety upon any bond given under the provisions of the preceding section shall be permitted to become a surety upon any other bond of like characaer.

Selling to minors, etc.

(3258) § **8.** Every person licensed as herein provided, who shall give or sell any malt, spirituous, vinous liquors or any intoxicating drinks to any minor, apprentice or servant under twenty-one years of age, shall forfeit and pay for each offense the sum of twenty-five dollars.

Misrepresenting age.

(3259) § **9.** Any minor, apprentice, or servant, who shall for the purpose of evading the provisions of the preceding section, falsely represent his age, shall be deemed guilty of a misdemeanor and fined for each and every offense, not exceeding twenty-five dollars.

Selling to insane or drunkard.

(3260) § **10.** Every person so licensed who shall sell any intoxicating liquors to any infirm, insane person or idiot or habitual drunkard, shall forfeit and pay for each offense the sum of fifty dollars.

Disposing without license.

(3261) § **11.** Any person who shall sell at retail or give away upon any pretext, malt, spirituous, or vinous liquors, or any intoxicating drinks without having first complied with the provisions of this act, and obtained a license as herein set forth, shall for each offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not to exceed one month in the county jail and shall be liable in all respects to the public and to individuals, the same as he would have been had he given bonds and obtained license as herein provided: *Provided*, That any person or persons shall be allowed to sell wine made from grapes grown or raised by said person or persons, on land belonging to or occupied by said person or persons in the Territory of Oklahoma, the same to be sold in quantities not less than one gallon, without procuring the license provided for in this chapter.

Hearing before magistrate.

(3262) § **12.** The magistrate before whom any complaint is made of a violation of the provisions of the preceding section, shall issue a warrant for the arrest of the offender and if upon examination the magistrate shall have reason to believe the party guilty, he shall recognize him to appear at the next term of the district court as in the case of felony.

Disposing adulterated liquors.

(3263) § **13.** Every person so licensed, or any other person, who shall intentionally or otherwise sell or give away, or direct or permit any person or persons in his employ to sell or give away,

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any malt, spiritous or vinous liquors which shall be adulterated with strychnine, strontia, sugar of lead, or any other substance shall forfeit and pay the sum of one hundred dollars for every such offense. An analysis made by a practicical chemist shall be deemed competent testimony under the provisions of this section:

Election days; Sundays

(3264) § **14**. Every person who shall sell or give away any malt, spirituous, and vinous liquors on the day of any special or general election or at any time during the first day of the week, commonly called Sunday, or who shall keep an open saloon after midnight, or open same before five o'clock in the morning shall forfeit and pay for every such offense the sum of one hundred dollars.

Suits by married woman or others.

(3265) § **15**. Any wife, mother, father, son or daughter, of a person who is in the habit of getting intoxicated, may make complaint to any justice of the peace of the county where such person resides or may be staying, alleging the name or names of the person or persons from whom such person having such habit obtained his liquor as such relative believes; and thereupon said justice of the peace shall without charge thereof issue a notice in writing to such person or persons so named notifying him or them that no intoxicating liquors of any kind must be sold or given away by him or them at his or their places of business to such person having such habit, and which notice must be at once served upon such person or persons in the same manner as summons are served in justice's courts, and after the service of such notice if any person or persons so notified shall sell, give away, or permit any person at his place of business to sell or give away any intoxicating liquors to such person about whom he or they have received notice as aforesaid his license to sell liquor shall from that time be deemed and held to be cancelled and annulled; and said persons so selling or giving away shall be fined in the sum not less than one hundred dollars and not more than five hundred dollars, and be liable in a civil action at the suit or such relative to pay him, her, or them, the sum of five hundred dollars damages for each offense and no property of any kind shall be exempt from payment of such fine or damages, except property absolutely exempted.

Maintenance of intemperate paupers.

(3266) § **16**. When any person shall become a county or city charge by reason of intemperance a suit may be instituted by the proper authorities on the bond of any person licensed under this act, who may have been in the habit of selling or giving away intoxicating liquors to the person so becoming a public charge: *Provided*, That the person against whom a judgment may be rendered under the provisions hereof may recover by a similar action a proportionate part of said judgment from any and all persons engaged in said traffic, who have sold or given liquor to such persons becoming a public charge or to any person committing an offense.

Trial, evidence.

(3267) § **17**. On trial of any suit under the provisions hereof the cause or foundation of which shall be the acts done or injuries inflicted by a person under the influence of liquor, it shall only be necessary to sustain the action to prove that the defendant or defendants sold or gave liquor to the person so intoxicated or under the influence of liquor whose acts or injuries are complained of on

that day or about that time when said acts were committed or said injuries received; and in an action for damages brought by a married woman or other person whose support legally devolves upon a person disqualified by intemperance from earning the same, it shall only be necessary to prove that the defendant has given or sold intoxicating drinks to such person during the period of such disqualification.

Suits, jurisdiction.

(3268) § **18.** All suits for damages and expenses arising under this act may be commenced and prosecuted before a justice of the peace where the damages claimed do not exceed the jurisdiction of said justice, although the penalty in the bond may exceed that amount, and the judgment shall be for the damages proved.

Penalty, complaint for unlawful sale.

(3269) § **19.** Hereafter it shall be unlawful for any person to keep for the purpose of sale at retail without license any malt, spirituous or vinous liquors in the Territory of Oklahoma, and any person or persons who shall be found in possession of any intoxicating liquors in this Territory with the intention of disposing of same, without license in violation of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined or imprisoned as provided in section eleven of this act. If any credible resident freeholder of any county in this Territory shall before any police judge, district judge or justice of the peace make complaint and information in writing and on oath that he has reason to believe and does believe that any intoxicating liquor describing it as particularly as may be in said complaint is in said county, in any place described as nearly as may be in said complaint, owned or kept by any person named or described in said information as particularly as may be, and is intended to be or is being, by the person named or described in said complaint, sold without license in violation of this act, said magistrate shall, upon filing said complaint and believing there is probable cause therefor issue his warrant for the search of the premises described in said complaint and the arrest of the person therein named or described as the case may be, naming and describing the liquors, person, and premises as in the complaint, which warrant shall be directed to the sheriff, city or villlage marshal or constable as the complaint may request and said warrant shall further command the officer that if after a thorough and diligent search of said premises liquor be found he shall seize the same with the vessels containing it and keep the same securely until final action be had thereon; and immediately arrest the person named or described in said warrant, or the person in charge of the said liquors and bring him before the said magistate for examination, and the possession of any of said liquors shall be presumptive evidence of a violation of this act, and subject a person to the fine prescribed in section eleven, unless after examination he shall satisfactorily account for and explain the possession thereof and that it was not kept for an unlawful purpose. Where any liquor shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same by reason of an alleged insufficiency of the description in the eomplaint or warrant; or of the liquor or places, but

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the claimant shall be entitled to an early and speedy hearing on the merits of the case: *Provided*, That, in case the place described in said complaint and to be searched in the residence of the person named or described in said complaint or any other person, then and in that case, the warrant shall not issue unless the complaint shall state that within thirty days immediately preceding the filing thereof, that liquor, describing it, has been sold therein in violation of this act.

Trial, destruction.

(3270) § **20**. If upon said examination the magistrate hearing the same shall be satisfied that the person named or described in the complaint or found in the possession of said liquors, and premises described therein and had been selling liquor without license in violation of this act, or had said liquors so seized in his or her possession with intent to dispose of the same in violation of this act, said magistrate shall hold said person so arrested for trial at the next term of the district court, and shall order the liquors so seized destroyed by the offender having them in charge: *Provided*, The defendant may appeal from said order to the district court in which case the liquors shall abide the result of the trial of the defendant in the district court, and if there convicted he shall be fined or imprisoned as in this act, provided in the discretion of the court and the court shall further order said liquors destroyed as if the appeal herein provided for had not been taken.

Punishment, cost; disposal of liquors.

(3271) § **21**. In case the defendant is acquitted he shall be discharged and the liquors returned, but if found guilty in addition to the payment of a fine he shall pay all costs of prosecution, including a reasonable attorney's fee to the prosecuting attorney in case the county attorney does not prosecute, to be determined by the court, in no case less than twenty-five dollars, which shall be taxed in the costs and recovered as other costs. If the defendant be discharged the costs shall be paid by the complaining witness unless the court shall sustain the finding that there was probable cause for the complaint. If no one is found in the possession of said premises, where said liquors may be found, the officer taking the same shall post in a conspicuous place on said building or premises a copy of his warrant and take possession of said liquors and the vessels containing the same, and hold them subject to the order of the magistrate and make return of his doings to the magistrate issuing the warrant. Whereupon it shall be the duty of the magistrate to fix a time for the hearing of the question for the purpose for which said liquors were kept and issue a notice thereof on the building or premises where the liquors were found: *Provided*, That the day so fixed shall not be less than five nor more than ten days from the date of the issuance of said notice. If at the time fixed for said hearing no persons appear, or if any person does appear after a hearing the magistrate shall be satisfied that said liquors were being kept or sold or with the intention and for the purpose of being sold in violation of this act, the magistrate shall order the same destroyed, and in case there is no appearance by the one claiming to be the owner of said liquors the costs shall be paid by the county in which the complaint is brought. For cases where the defendant is ac-

quitted, and if any one appears and resists the complaint, he shall be adjudged to pay the costs if the liquor be ordered destroyed: *Provided*, The possession of said liquors is not found to be for an unlawful purpose the magistrate shall order them returned to the place where seized.

Fines, payment of.

(3272) § **22.** All fines and penalties recovered under the provisions of this act shall, when collected, be paid into the proper treasury for the use of the school fund.

Gambling prohibited.

(3273) § **23.** It shall be unlawful for any dealer in intoxicating liquors in this Territory, to have, or permit, any gambling, game of chance, or gambling carried on, or to have or keep any gambling table, billiard or pool table, or gaming device of any kind in the room where liquors are sold, and on conviction of same shall be adjudged guilty of a misdemeanor and fined in any sum not exceeding five hundred dollars.

License in cities

(3274) § **24.** It shall be competent and lawful for any incorporated village or city within the county where such bond is filed and license granted to prohibit the party so licensed as well as others from engaging in the business of selling intoxicating liquors at retail within the corporate limits or within two miles thereof until he shall obtain from the village, town or city authorities a license, and pay into the village, town or city treasury such sum as may be fixed by ordinance to be not less than one hundred dollars nor more than five hundred dollars: *Provided*, That no additional bond shall be required nor shall any license be granted by authorities of any such village, town or city, to any one who has not filed the required bond with the board of county commissioners and obtained from such board a license: *And provided further*, That no license granted by any such incorporated village, town or city shall run for a longer period than the license granted by such board; and the revocation of the county license by the board of county commissioners shall work a revocation of any license granted under the provisions of this section.

Saloons open to view

(3275) § **25.** It shall be the duty of all vendors of malt, spirituous and vinous liquors, under the provisions of this act to keep the windows and doors of their respective places of business unobstructed by screens, blinds, paint or other articles, and any person offending against the provisions of this section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five dollars or be imprisoned in the county jail not less than ten days or both at the discretion of the court, and shall have his license revoked by the same authority granting the same.

Sale prohibited in certain cases.

(3276) § **26.** That no person shall sell, or expose for sale, give, barter or otherwise dispose of in any way or at any place any spirituous or other liquors or any article of traffic whatever, at or within the distance of three miles from the place where any religious society or assemblage of people are collecting or collected together for religious worship in any field or woodland: *Provided*, That nothing in this act shall effect tavern keepers from exercising their calling nor distillers, manufacturers or others in prosecuting their regular trades at their places of business,

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or any person disposing of any ordinary articles of provisions, excepting spirituous liquors at their residences, or any person having a written permit from the trustees or managers of any such religious society or assemblage, to sell provisions for the supply of persons attending such religious worship, their horses or cattle, such persons acting in conformity to the regulations of said religious assembly and the laws of the Territory.

Penalty.

(3277) § **27.** That any person found guilty of committing a breach of the provisions of this act shall forfeit and pay for every such offense the penalty provided therefor and where no penalty is provided a fine not less than twenty nor more than five hundred dollars into the county treasury of the county within which offense was committed for the use of the common schools in said county, and any district judge, sheriff, coroner, or justice of the peace shall upon view or information and with or without warrant apprehend any person or persons so offending and seize all such liquors and other articles of traffic and the utensils or furniture containing them and convey them before a justice of the peace or the district judge within the county in which crime or offense may be committed, and the said district judge or justice of the peace upon complaint under oath or affirmation of said officer apprehending such offender or any person giving information shall issue his warrant of arrest which shall be formally served by the proper officer and proceed to inquire into the truth of such accusation, and, if found true, shall proceed to bind such offender or offenders in an amount not exceeding five hundred dollars as he shall deem proper to answer at the next regular term of the district court in and for the county in which such offense shall have been committed, to be proceeded with by indictment, the fine and costs to be allotted as in other criminal cases.

When prosecuting witness to pay costs.

(3278) § **28.** That in any prosecution against any person orpersons for a violation of the provisions of this act if the defendant or defendants shall be acquitted he or they shall recover of the person or persons filing the complaint double the amount of his or their costs which said judge or justice shall award.

Duties of officers

(3279) § **29.** It shall be the duty of all constables, sheriffs, police officers, and county attorneys to enforce the provisions of this act and to bring civil actions and to file informations for any and all violations of each and every provision thereof of which he has or can obtain legal advice. If any such officer fail so to do he he shall be removed from his office.

Complaint to remove officer.

(3280) § **30.** For the purpose of such removal any resident of the county may if the officer be a county officer file complaint before the district court and if he be a city officer, before the city council, and on such information the evidence shall be heard and if it be made to appear that such officer knew of the violations of this act and that he failed to prosecute the same there shall be entered an order removing him from office and the office shall be vacant.

Vacancy, how filled

(3281) § **31.** If the office so vacated be a county office the board of county commissioners shall proceed at once to fill the same by appointment and if it be a village or city office the

vacancy shall be filled as provided by the ordinance of such village or city.

Wholesalers.

(3282) § **32.** That all persons selling liquors at wholesale shall be subject to all the provisions of this act except that they shall be required to pay in each county within the Territory where they so wholesale liquous a license fee of twenty-five dollars per annum or for any part of the year they may so sell and no more, and shall not be required to pay the license fee hereinbefore mentioned. And no wholesale dealer shall engage in the retailing of liquor.

Penalty for violation.

(3283) § **33.** Any person violating the provisions of this act shall be deemed guilty of a misdemeanor; and upon conviction shalt be sentenced to pay a fine not less than one hundred, nor more than five hundred dollars or imprisonment in the county jail not exceeding six months or by both such fine and imprisonment.

ARTICLE 2.—PROHIBITS SALE NEAR BRITTON.

SECTION.
1. Prohibits sale.
2. Penalty.
3. Distance, how calculated.
4. Giving away.
5. Fines, how apportioned; seizure of property.

AN ACT to prohibit the sale of intoxicating liquors within three miles of the Methodist Episcopal College to be located and erected at Britton Station in Oklahoma County.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Prohibits sale.

(3284) § **1.** That from and after the opening of the college hereinafter mentioned, it shall not be lawful for any person by himself agent or otherwise, to sell in any quantities intoxicating liquors at any place, room, building or premises within three miles of the "Methodist Episcopal College" soon to be located and erected at Britton Station in Oklahoma County Oklahoma Territory and no license to sell liquors within said limits shall be issued by the authorities of the county of Oklahoma: *Provided however*, That this act shall become null and void unless the said college is established at Britton in said county and its buildings erected, the faculty employed, and the college opened for the reception of students within two years from the date of the passage of this act.

Penalty.

(3285) § **2.** Every person selling intoxicating liquors in violation of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than three hundred dollars for the first offense and not less than three hundred dollars for the second offense and each and every offense thereafter, or by imprisonment in the county jail not less than thirty days for the first offense and not less than sixty days for the second offense

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or by both such fine and imprisonment in the discretion of the court.

Distance, how calculated.

(3286) § **3.** For the purpose of calculating and ascertaining the distance of said three miles from said Britton Station the starting point shall be the middle point of the east front line of the main building of said college at the surface of the ground when said building shall be erected.

Giving away.

(3287) § **4.** The giving away of intoxicating liquors or any other shift or device to evade the provisions of this act, shall be deemed and held to be an unlawful selling within the provisions of the same.

Fines, how appropriated, seizure of property.

(3288) § **5.** All fines collected under the provisions of this act shall be paid over to the county treasurer to the credit of the general school fund of Oklahoma county and all property real and personal, except that absolutely exempt, belonging to the person convicted, and all furniture, liquors, glasses bottles, kegs, and barrels in the custody of any person so selling intoxicating liquors, shall be liable to seizure and sale to pay any fine against such person so selling intoxicating liquors.

CHAPTER XLIX.—LIENS.

ARTICLE.
1. Liens in general.
2. Mechanic's liens.

ARTICLE 1.—LIENS IN GENERAL.

Definition of Liens.

SECTION.
1. Lien defined.
2. Classes of liens.
3. General lien.
4. Special lien; prior lien.
5. Law applied.

Creation of Liens.

SECTION.
6. Lien created, how.
7. Created by law.
8. Lien on future interest.
9. Lien to take immediate effect.

Effect of Liens.

SECTION.
10. Lien transfers no title.
11. Contracts for forfeiture of property subject to lien.
12. Lien does not imply obligation.
13. Extent of lien limited.
14. No compensation to holder of lien.

Priority of Liens.

SECTION.
15. Priority of lien according to date.
16 Lien for purchase money.
17. Order of resort for payment of prior liens.

Redemption of Liens.

SECTION.
18. Every person having interest may redeem
19. Holder of inferior lien may redeem.
20. Redemption, how made.

Extinction of Liens.

SECTION.
21. Lien is accessory to obligation.
22. Sale by holder of lien.
23. Lapse of time does not extinguish.
24. Partial performance does not extinguish.
25. Voluntary restoration.

Other Liens.

SECTION.
26 Lien for price of realty.
27. Lien may be waived.
28. Certain liens declared valid.
29 Special lien on personal property.
30 Lien of purchase of real property.
31. Lien for services rendered.
32. Lien of factor.
33. Banker's lien.
34 Shipmaster has lien.
35. Mate and seamen have lien for wages.
36. Officer has lien for services.
37. Other liens.
38. Judgment lien.
39. Mechanics' liens on real property.
40. Same, on personal property.

CHAPTER XLIX—continued.

Stoppage in Transit.

SECTION.
41. Seller or consignor may stop.
42. Insolvency defined.
43. Transit ends.
44. Stoppage effected, how, effect of.

Lien defined.

(3289) § **1.** A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

Classes of liens

(3290) § **2.** Liens are either general or special.

General lien.

(3291) § **3.** A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

Special lien prior lien

(3292) § **4.** A special lien is one which the holder thereof can enforce only as a security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

What law applies to.

(3293) § **5.** Contracts of mortgage, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter.

Lien created, how

(3294) § **6.** A lien is created:

First. By contract of the parties; or,

Second. By operation of law.

Lien created by law.

(3295) § **7.** No lien arises by mere operation of law and until the time at which the act to be secured thereby ought to be performed.

Lien on future interest

(3296) § **8.** An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing to the extent of such interest.

Lien to take immediate effect

(3297) § **9.** A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

Lien transfers no title.

(3298) § **10.** Notwithstanding an agreement to the contrary; a lien or a contract for a lien transfers no title to the property subject to the lien.

Contracts for forfeiture of property subject to lien are void

(3299) § **11.** All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void, except in the case specified in section 2761.

Lien does not imply obligation

(3300) § **12.** The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

Extent of lien limited.

(3301) § **13.** The existence of a lien upon property does not of itself entitle the person, in whose favor it exists, to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

Holder of lien not entitled to compensation.

(3302) § **14.** One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections *2772* and *2773*.

Priority of liens according to date

(3303) § **15.** Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

Lien for purchase price has priority over all others

(3304) § **16.** A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

Order of resort for payment of prior liens.

(3305) § **17.** Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without the risk of loss to himself, or injustice to other persons, must resort to the property in the following order. on the demand of any party interested:

First. To the things upon which he has an exclusive lien.

Second. To the things which are subject to the fewest subordinate liens.

Third. In like manner inversely to the number of subordinate liens upon the same thing; and,

Fourth. When several things are within one of the forgoing classes, and subject to the same number of liens, resort must be had:

(*a*) To the things which have not been transferred since the prior lien was created.

(*b*) To the things which have been so transferred without a valuable consideration; and,

(*c*) To the things which have been so transferred for a valuable consideration.

Every person having interest may redeem lien.

(3306) § **18.** Every person having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

Holder of inferior lien may redeem.

(3307) § **19.** One who has a lien, inferior to another upon the same property, has a right:

First. To redeem the property in the same manner as its owner might, from the superior lien; and,

Second. To be subrogated to all the benefits of the superior lien when necessary for the protection of his interests, upon satisfying the claim secured thereby.

Redemption, how made.

(3308) § **20.** Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

Lien is an accessory obligation

(3309) § **21.** A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

Sale of property by holder of lien extinguishes lien.

(3310) § **22.** The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or, in case of

personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

Not extinguished by mere lapse of time.

(3311) § **23.** A lien is extinguished by the mere lapse of the time within which, under the provisionsof civil procedure, an action can be brought upon the principal obligation.

Partial performance does not extinguish part of lien.

(3312) § **24.** The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

Voluntary restoration extinguishes lien.

(3313) § **25.** The voluntary restoration of property to its owner, by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring title to the property, or a lien thereon, in good faith and for a good consideration.

Lien for price of realty.

(3314) § **26.** One who sells real property has a special or vendor's lien thereon, independent of possession, for so much of the price as remains unpaid, and unsecured otherwise than by the personal obligation of the buyer.

Lien may be waived

(3315) § **27.** Where the buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller, waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

Certain liens declared valid.

(3316) § **28.** The liens defined in sections 3314 and 3318 are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith, and for value.

Special lien on personal property; same as pledge.

(3317) § **29.** One who sells personal property has a special lien thereon, dependent on possession for its price, if it is in his possession when the price becomes payable; and may enforce his lien in like manner as if the property was pledged to him for the price.

Lien of purchaser of real property.

(3318) § **30.** One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back in case of a failure of consideration.

Lien for services rendered

(3319) § **31.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, improvement, safe-keeping or carriage thereof, has a special lien thereon, dependent on posession, for the compensation, if any, which is due to him from the owner for such service.

Lien of factor upon articles intrusted to him.

(3320) § **32.** A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

Banker has lien.

(3321) § **33.** A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

Shipmaster has lien.

(3322) § **34.** The master of a ship has a general lien, inde-

pendent of posession, upon the ship and freightage, for advances necessarily made, or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

Mate and seamen have lien for wages.

(3323) § **35.** The mate and seamen of a ship have a general lien, independent of posession, upon the ship and freightage for their wages, which is superior to every other lien.

Officer has lien for services

(3324) § **36.** An officer, who levies an attachment or execution upon personal property, acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

Other liens Judgment liens.

(3325) § **37.** Inn-keepers, boarding-house keepers, attorneys at law, and others, have liens which are defined and regulated.

(3326) § **38.** The lien of a judgment is regulated by civil procedure.

Mechanic's liens on real property.

(3327) § **39.** The liens of mechanics, for materials and services upon real property, are regulated by civil procedure.

Mechanics lien on personal property.

(3328) § **40.** A person who makes, alters. or repairs any article of personal property, at the request of the owner or legal possessor of the property, has a lien on the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done, the person may proceed to sell the property at public auction, by giving ten days public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three of the most public places in the town where the work was done, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien, and the cost of keeping and selling the property the remainder, if any, must be paid over to the owner thereof.

Seller or consignor may stop property in transit.

(3329) § **41.** A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

Insolvency defined.

(3330) § **42.** A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingless to do so.

Transit ends, when.

(3331) § **43.** The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

Stoppage in transit effected, how.

(3332) § **44.** Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof. Stoppage in transit does not of itself rescind a sale, but is a means of enforcing the lien of the seller.

ARTICLE 2.—MECHANICS' LIENS.

SECTION.
1. Collateral security voids mechanics' lien.
2. Who may have mechanics' lien, and for what.
3. Sub-contractor must file his lien within sixty days.
4. In case of railway companies and contractors.
5. Sub-contractor's lien within six months; statement and affidavit.
6. If settlement with contractor is refused
7. Certificate of settlement or statement of sub-contractor
8. Notices served, by whom.
9. Liens of other persons.
10. Clerk's record of liens.
11. Priority of liens
12. Lands subject to the liens.
13. Lien superior to mortgage, when.
14. Action brought to enforce lien.
15. Demand upon lienor to commence action
16. Owner defined.
17. Satisfaction of liens to be registered.
18. Sub-contractor defined.

Collateral security voids mechanic's lien

(3333) § **1.** No person is entitled to a mechanic's lien who takes collateral security on the same contract.

Who may have mechanic's lien, and for what.

(3334) § **2.** Every mechanic, or other person who shall do any labor upon, or furnish any materials, machinery or fixtures for any building, erection or other improvements upon land, including those engaged in the construction or repair of any work of internal improvement, by virtue of any contract with the owner, his agent, trustee, contractor or sub-contractor, upon complying with the provisions of this article, shall have for his labor done, or materials, machinery, or fixtures furnished, a lien upon such building, erection or improvement, and upon the land belonging to such owner, on which the same is situated, to secure the payment of such labor done, or materials, machinery, or fixtures furnished: *Provided*, That the provisions of this section and article, shall not be construed to apply to claims or contracts for furnishing lightning rods or any of their improvement.

Sub-contractor must file his lien within sixty days.

(3335) § **3.** Every sub-contractor wishing to avail himself of the benefits of this article, shall, within sixty days after the material shall have been furnished or labor performed, file with the clerk of the district court of the county or judicial sub-division in which the building, erection or other improvement to be charged with the lien is situated, a just and true account of the demand due him after allowing all credits, and containing a correct description of the property to be charged with said lien, and verified by his affidavit. But a failure to file the same within the time aforesaid shall not defeat the lien except as against purchasers or incumbrancers in good faith and without notice whose rights accrued after the sixty days, and before any claim for the lien was filed, or against the owners, except the amount due to contractor at the time of filing the same.

In the case of railway companies or contractors.

(3336) § **4.** Every railway owner, company, or contractor, and sub-connractor upon any railway, shall be deemed to have the notice provided for by the preceding section for a period of sixty days from the last day of the month in which such labor was done, or material furnished, during which period any person who has performed such labor or furnished such material, may file a lien with the clerk of the district court as provided in the preceding section, which lien shall be binding upon the erection, excava-

tion, embankment, bridge, road bed, or right of way, and upon all land upon which the same may be situated, to the full value of such labor or material, in the county or judicial subdivision in which the same is filed. In case the lien is sought to be enforced against the owner, the liability shall not be greater than his liability would have been to the owner at the time the labor was performed or material furnished; but the liability of the owner in case actual notice shall be given after the sixty days, shall be the same as provided in this article.

Sub-contractor's lien within six months; statement and affidavit.

(3337 § **5**. Every sub-contractor may, at any time within six months after his labor is performed or materials furnished, make a statement thereof in writing, supported by affidavit, that the same is just and true, and file the same with the clerk of the district court of the proper county or judicial sub-division, and give notice thereof, with a copy of such statement to the owner, his agent or trustee, and to the contractor; and from and after the service of such notice, his lien therefor, shall have the same force and effect, and be prosecuted in like manner as a lien by the contractor, but shall be enforced against the property only to the extent of the balance due to the contractor at the time of the service of such notice upon the owner, his agent or trustee.

If settlement with contractor is refused.

(3338) § **6**. In case the contractor shall refuse to make and sign such settlement, then the sub-contractor may make a just and true statement of the labor done, or things furnished, giving all credits, which he shall present to the owner, his agent or trustee, and shall also within said thirty days file a copy of the same, verified by affidavit, with the clerk of the district court of the county or judicial sub-division in which the building, erection or other improvement is situated, together with a correct discription of the property to be charged with the lien.

Certificate of settlement or statement of sub-contractor.

(3339) § **7**. The certificate of settlement or statement of the sub-contractor, shall be a justification to the owner in withholding from the contractor the amount appearing thereby to be due the sub-contractor until the same has been paid, and the owner shall become the surety of the contractor to the sub-contractor for the amount due to the extent before provided.

Notices served, by whom.

(3340) § **8**. The notices mentioned in this article may be served by any sheriff or constable, and the return thereon shall be received in evidence without further proof.

Liens of other persons.

(3341) § **9**. Every person, except as has been provided for sub-contractors, who wishes to avail himself of the provisions of this article, may file with the clerk of the district court of the county or judicial subdivision in which the building, erection or other improvement to be charged with the lien is situated, and within ninety days after all the things aforesaid shall have been furnished or the labor done, a just and true account of the demand due him after allowing all credits, and containing a correct description of the property to be charged with said lien, and verified by affidavit; but a failure to file the same within the time aforesaid shall not defeat the lien, except against purchasers, or incumbrancers in good faith, without notice, whose

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rights, accrued after the ninety days and before any claim for the lien was filed.

Clerk's record of liens.

(3342) § **10.** The clerk of the district court shall endorse upon every account of the date of its filing, and make an abstract thereof in a book to be kept by him for that purpose, and properly indorsed, containing the date of its filing, the name of the person filing the lien, the amount of said lien, the name of the person against whose property the lien is filed, and a description of the property to be charged with the same.

Priority of liens.

(3343) § **11.** The liens for labor done or things furnished shall have priority in the order of the filing of the accounts thereof, as aforesaid, and shall be preferred to all other liens and incumbrances which may be attached to or upon said building, erection or other improvement, and to the land on which the same is situated, or either of them, made subsequent to the commencement of said building, erection or other improvement.

Lands subject to the liens.

(3344) § **12.** The entire land upon which any such building, erection or other improvement is situated, including that portion of the same not covered therewith, shall be subject to all liens created by this article, to the extent of all the right, title and interest owned therein by the owner thereof, for whose immediate use or benefit such labor was done or things furnished, and when the interest owned in said land by such owner of such building, erection or other improvement, is only a leasehold interest, the forfeiture of such lease for the non-payment of rent, or for non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as it concerns such buildings, erections and improvements, but the same may be sold to satisfy said lien, and be removed within thirty days after the sale thereof by the purchaser.

Lien superior to mortgage, when.

(3345) § **13.** The lien for the things aforesaid, or work, shall attach to the buildings, erections or improvements, for which they were furnished or done, in preference to any prior lien or incumbrance, or mortgage upon the land upon which the same is erected or put, and any person enforcing such lien, may have such building, erection or other improvememt, sold under execution, and the purchaser may remove the same within a reasonable time thereafter.

Action may be brought to enforce lien.

(3346) § **14.** Any person having a lien by virtue of this article may bring an action to enforce the same in the district court of the county or judicial subdivision where the property is situated, and any number of persons claiming liens against the same property may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow as part of the costs the money paid for filing each lien and the sum of five dollars for drawing the same.

Demand upon lienor to commence action.

(3347) § **15.** Upon the written demand of the owner, his agent or contractor, served on the person holding the lien, requiring him to commence suit to enforce such lien, such suit shall be commenced in thirty days thereafter, or the lien shall be forfeited.

Owner defined.

(3348) § **16.** Every person for whose immediate use and ben-

efit any building, erection or improvement is made, having the capacity to contract, including guardians of minors, or other persons, shall be included in the word "owner" thereof.

Satisfaction of liens to be registered.

(3349) § **17.** Whenever a lien has been claimed by filing the same in the clerk's office, and it is afterwards paid, the creditor shall acknowledge the satisfaction thereof on the proper book in such office, or otherwise in writing, and if he neglects to do so for ten days after demand, he shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of the injury.

Sub-contractor defined.

(3350) § **18.** All persons furnishing things or doing work provided for by this article, shall be considered sub-contractors, except such as have therefor contracts directly with the owner, proprietor, his agent or trustee.

CHAPTER L.—MARRIAGE CONTRACTS.

ARTICLE.
1. Validity.
2. Dissolution.
3 Other causes for denying divorce.
4. General provisions.
5. Husband and wife.

ARTICLE 1.—VALIDITY.

SECTION.
1. Marriage contract defined.
2. Proof of marriage.
3 Lawful age for marriage.
4. Consent must be in present terms.
5. Certain marriages declared incestuous.
6. Certain marriages voidable.
7 When subsequent marriage is illegal.
8. Pardon does not restore rights of previous marriage.
9. Indian marriages.
10. Law regarding other contracts.
11 Promise of marriage subject to rules regarding contracts.
12. Marriage solemnized, how.
13. Declaration of marriage must show what.
14. Prerequisites of marriage
15. Record of marriage.
16. Certificate of marriage to be furnished.
17. Marriage must be registered.
18. What register must show.
19. Acknowledgement of the certificate
20. Certificate is presumptive evidence.
21. Causes for annulling marriage.
22. Limitation of action for annulling marriages.
23. Children ligitimate.
24. Custody of children.
25. Effect of judgment of nullity.

Marriage contract defined.

(3351) § **1.** Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties, or obligations.

Proof of marriage.

(3352) § **2.** Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

Lawful age for marriage

(3353) § **3.** Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

Consent must be present

(3354) § **4.** The consent to a marriage must be to one commencing instantly, and not to an agreement to marry afterwards.

Certain marriages declared incestuous.

(3355) § **5.** Marriages between parents and children, ances-

tors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, and between cousins of the same half as well as of the whole blood, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.

Certain marriages voidable.

(3356) § **6.** If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable. Every marriage of a step-father with a step-daughter, or of a step-mother with a step-son, is illegal and void.

When subsequent marriage is illegal

(3357) § **7.** A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

First. The former marriage has been annnlled or dissolved.

Second. Unless such former husband or wife was absent and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

Pardon does not restore rights of previous marriage.

(3358) § **8.** No pardon granted after the approval of this act to any person sentenced to imprisonment for life in this Territory restores such person to the rights of any previous marriage, or to the guardianship of any issue of such marriage.

Indian marriages

(3359) § **9.** Indians contracting marriage according to the Indian custom, and cohabiting as husband and wife, are lawfully married.

Law regarding other contracts does not affect contract of marriage

(3360) § **10.** The provisions of other portions of this statute in relation to contracts and the capacity of persons to enter into them, have no application to the contract of marriage.

Promise of marriage subject to same rules as as other contracts.

(3361) § **11.** A promise of marriage is subject to the same rules as contracts in general, but neither party to a promise or contract to marry is bound by promise made in ignorance of the other's want of personal chastity; and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein. All marriages contracted without this Territory, which would be valid by the laws of the country in which the same were contracted, are valid in this Territory.

Marriage solemnized, how.

(3362) § **12.** Marriage must be solemnized, authenticated and recorded as provided in this article; but non-compliance with its provisions does not invalidate any lawful marriage. It may be solemnized by either a justice of the Supreme Court, a judge of the probate court, or justice of the peace, a mayor, or by a minister of the gospel, or priest of any denomination; and in case of Indians, by the peacemakers, their agents, or superintendent of Indian affairs.

Declaration of marriage, what must show.

(3363) § **13.** No particular form for the ceremony of marriage is required, but the parties must declare, in the presence

of the person solemnizing the marriage, and of at least one witness, that they take each other as husband and wife. Persons married without the solemnization provided for in this and the preceding section must, for the purpose of authentication, jointly make a written declaration of marriage, substantially showing:

First. The names, ages and residence of the parties.

Second. The fact of the marriage.

Third. The time of the marriage.

Fourth. That the marriage has not been solemnized.

If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage substantially showing:

First. The names, ages and residence of the parties.

Second. The fact of marriage.

Third. That no record of such marriage is known to exist. Such declaration must be subscribed by the parties and attested by at least three witnesses. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property. And if either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed by action in the district court to have the validity of the marriage determined and declared.

Prerequisites of marriage.

(3364) § **14**. The person solemnizing a marriage must ascertain to his satisfaction:

First. The identity of the parties.

Second. Their real and full names, and places of residence.

Third. That they are of sufficient age to be capable of contracting marriage; and,

Fourth. The name and place of residence of the witness, or two witnesses, if more than one is present.

Record of marriage

(3365) § **15**. The person solemnizing a marriage must enter the facts ascertained by him, pursuant to the last section; and the date of the solemnization, in a book to be kept by him for that purpose.

Certificate of marriage to be furnished.

(3366) § **16**. The person solemnizing marriage must furnish to either party, on request, a certificate thereof, signed by him, specifying:

First. The names and places of residence of the parties married.

Second. That they were known to him, or were satisfactorily proved by the oath of a person known to him, to be the persons described in such certificate.

Third. That he had ascertained that they were of sufficient age to contract marriage.

Fourth. The name and place of residence of the attesting witness, or of two witnesses.

Fifth. The time and place of such marriage; and,

Sixth. That after due inquiry made, there appeared to be no lawful impediment to such marriage.

Marriage must be registered.

(3367) § **17**. The certificate mentioned in the last section may, within six months after the marriage, be filed with the clerk of the

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city or town where the marriage was solemnized, or where either of the parties reside or the register of deeds of such county, and, when thus filed, must be entered in a book to be provided by such officer, in the alphabetical order of the name of each party, and in the order of time in which it is filed.

Register must show what.

(3368) § **18.** The entry required by the last section must specify:

First. The name and place of residence of each party.

Second. The time and place of marriage.

Third. The name and official station of the person signing the certificate; and

Fourth. The time when the certificate was filed.

Acknowledgment of certificate

(3369) § **19.** If a certificate of marriage is signed by a minister or priest, there must be indorsed or annexed, before filing a certificate of a magistrate residing in the same county with the clerk, that the person by whom it is signed is personally known to such magistrate, and has acknowledged the execution of the certificate in his presence, or that the execution of the certificate by a minister or priest of some religious denomination has been proved to the magistrate by the oath of a person known to him and who saw the certificate executed.

Certificate or certified copy thereof presumptive evidence

(3370) § **20.** A certificate or declaration of marriage, or the entry thereof made as above directed, or a copy of the certificate or declaration or entry, duly certified, is presumptive evidence of the fact of the marriage.

Marriage annulled, causes therefor.

(3371) § **21.** A marriage may be annulled by an action in the district court to obtain a decree of nullity, for any of the following causes existing at the time of the marriage:

First. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent; and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her, unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

Second. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

Third. That either party was of unsound mind, unlsss such party, after coming to reason, freely cohabited with the other as husband and wife.

Fourth. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

Fifth. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

Sixth. That either party was, at the time of the marriage, physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable.

Every minister or magistrate who solemnizes any marriage where either of the parties is known to him to be under the age of legal consent, and without the consent of his or her parents or guardian, or persons having charge of him or her, or where either of the parties is known to him to be of unsound mind, or any marriage to which, within his knowledge, any legal impediment exists, is guilty of a misdemeanor.

Limitation of action for annulling marriage.

(3372) § **22.** An action to obtain a degree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

First. For causes mentioned in subdivision 1; by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent, or by a parent, guardian or other person having charge of such non-aged male or female, or any time before such married minor has arrived at the age of legal consent.

Second. For causes mentioned in sub-division 2; by either party during the life of the other, or by such former husband or wife.

Third. For causes mentioned in sub-division 3; by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

Fourth. For causes mentioned in sub-division 4; by the party injured within four years after the discovery of the facts constituting the fraud.

Fifth. For causes mentioned in sub-division 5; by the injured party within four years after the marriage.

Sixth. For causes mentioned in sub-division 6; by the injured party, within four years after the marriage.

Children legitimate.

(3373) § **23.** Where the marriage is annulled on the ground that a former husband or wife was living, or on the ground of insanity, children begotten before the judgment are legitimate, and succeed to the estate of both parents.

Custody of children

(3374) § **24.** The court must award the custody of the children of a marriage annulled on the ground of fraud or force, to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

Judgment of nullity, effect of.

(3375) § **25.** A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

SECTION.
1. Marriage dissolved, how.
2. Causes for divorce.
3. Adultery defined.
4. Extreme cruelty defined.
5. Desertion defined.
6. Wilful neglect defined.
7. Habitual intemperance defined.
8. Desertion. neglect and intemperance must continue one year.
9. Divorce will be denied, when.
10. Connivance defined.
11. Collusion defined.
12. Condonation defined.
13. Requirements necessary to condonation.
14. Condonation revoked, when.
15. Recrimination defined.
16. Adultery by husband; legitimacy of children.
17. Adultery by wife; legitimacy of children.
18. Persons guilty of adultery cannot re-marry.

Marriage dissolved, how.

(3376) § **1.** Marriage is dissolved only:

First. By the death of one of the parties; or,

Second. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons. The district court in each county or subdivision, has such jurisdiction in an action as is provided in civil procedure.

Causes for divorce.

(3377) § **2.** Divorces may be granted for any of the following causes:

First. Adultery.

Second. Extreme cruelty.

Third. Wilful desertion.

Fourth. Wilful neglect.

Fifth. Habitual intemperance.

Sixth. Conviction for felony.

Adultery defined.

(3378) § **3.** Adultery, as to its definition as here used, is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

Extreme cruelty defined.

(3379) § **4.** Extreme cruelty is the infliction of grevious bodily injury or grevious mental suffering upon the other, by one party to the marriage.

Desertion defined

(3380) § **5.** Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

First. Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

Second. When one party is induced by the stratagem or fraud of the other party, to leave the family dwelling place, or to be absene, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

Third. Departure or absence of one party from the family dwelling place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the other party.

Fourth. Separation by consent, with or without the understand-

ing that one of the parties will apply for a divorce, is not desertion.

Fifth. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

Sixth. Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

Seventh. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of the refusal.

Eighth. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

Ninth. If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

Wilful neglect defined.

(3381) § **6.** Wilful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

Habitual intemperance defined.

(3382) § **7.** Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

Duration of offenses as ground for divorce.

(3383) § **8.** Wilful desertion, wilful neglect, or habitual intemperance, must continue for one year before either is a ground for divorce.

Divorce will be denied, when.

(3384) § **9.** Divorces must be denied upon showing:

First. Connivance; or,

Second. Collusion; or,

Third. Condonation; or,

Fourth. Recrimination; or,

Fifth. Limitation and lapse of time.

Connivance defined.

(3385) § **10.** Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce. Corrupt consent is manifested by passive permission, with extent to connive at or actively procure the commission of the acts complained of.

Collusion defined.

(3386) § **11.** Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

Condonation defined.

(3387) § **12.** Condonation is the conditional forgiveness of a matrimonal offense constituting a cause of divorce.

Requirements necessary to condonation.

(3388) § **13.** The following requirements are necessary to condonation:

First. A knowledge on the part of the condoner of the facts constituting the cause of divorce.

Second. Reconciliation and remission of the offense by the injured party.

Third. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent, that the forgiving party must be treated with conjugal kindness. Where the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from excessive acts of ill-treatment, which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete, as to the acts complained of. A fraudulent concealment, by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

Condonation revoked, when.

(3389) § **14.** Condonation is revoked and the original cause of divorce revived:

First. When the condonee commits acts constituting a like or other cause of divorce; or,

Second. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

Recrimination defined.

(3390) § **15.** Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's, cause of divorce. Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense unless the condonation be revoked, as above provided, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown.

Adultery by husband and legitimacy of children

(3391) § **16.** When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage, begotten of the wife before the commencement of the action, is not affected.

Adultery by wife and legitimacy of children

(3392) § **17.** When a divorce is granted for the adultery of the wife, the legitimacy of children begotton of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children begotton before the commencement of the action, are to be presumed legitimate until the contrary is shown.

Person guilty of adultery cannot marry.

(3393) § **18.** When a divorce is granted for adultery, the innocent party may marry again during the life of the other; but the guilty party cannot marry any person except the innocent party, until the death of the other.

SECTION.
1. Limitation as to time.
2. No other limitations.
3. Residence of ninety days.
4. Presumption as to domicile.
5. Affirmative proof required in action for divorce.

(3394) § **1**. A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of the offense set up as a ground of divorce. The presumption, arising from lapse of time, may be rebutted by showing reasonable grounds for the delay in commencing the action. Limitation as to time.

(3395) § **2**. There are no limitations of time for commencing actions for divorce, except such as are contained in the foregoing section 3394. No other limitations.

(3396) § **3**. A divorce must not be granted unless the plaintiff has, in good faith been a resident of the Territory ninety days next preceding the commencement of the action. Residence of ninety days necessary.

(3397) § **4**. In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife, does not apply. After separation each party may have a separate domicile, depending for proof upon actual residence, and not upon legal presumption. Presumption as to domicile.

(3398) § **5**. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court must be upon written questions and answers. Affirmative proof required in case of divorce.

ARTICLE 4.—GENERAL PROVISIONS.

SECTION.
1. Maintenance when divorce is denied.
2. Alimony pending action for divorce.
3 Custody of children.
4. Support of wife and children in case of divorce.
5. Security for support; homestead assigned to innocent party.

(3399) § **1**. Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance of a wife and her children, or any of them, by the husband. Maintenance when divorce denied.

(3400) § **2**. While an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action. Alimony pending action for divorce.

(3401) § **3**. In an action for divorce the court may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same. Custody of children.

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Support of wife and children in case of divorce

(3402) § **4.** Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects.

Security for support may be required, homestead may be assigned to innocent party.

(3403) § **5.** The court may require the husband to give reasonable security for providing maintenance, or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case. But when the wife has a seperate estate sufficient to give her a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband. The court, in rendering a decree of divorce, may assign the homestead to the innocent party, either absolutely or for a limited period, according to the facts in the case, and in consonance with the law relating to homsteads. The disposition of the homestead by the court, and all orders and decrees touching the alimony and maintenance of the wife, and for the custody, education and support of the children, as above provided, are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

ARTICLE 5.—HUSBAND AND WIFE.

SECTION.
1. Relations of husband and wife.
2. Husband is head of the family.
3. Duty to support.

Relations of husband and wife.

(3404) § **1.** Husband and wife contract toward each other obligations of mutual respect, fidelity and support.

Husband head of the family.

(3405) § **2.** The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

Duty to support

(3406) § **3.** The husband must support himself and wife out of his property or by his labor. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and he is unable, from infirmity, to support himself.

CHAPTER LI.—MASTER AND SERVANT.

ARTICLE.
1. Service with employment.
2. Master and servant.
3. Shipmaster and seaman.
4. Service without employment.

ARTICLE 1.—SERVICE WITH EMPLOYMENT.

Obligations of the Employer.

SECTION.
1. Indemnity to employe.
2. Co-employe.
3. Employer's negligence.

Obligations of the Employe.

SECTION.
4. Gratuitous employe.
5. Same.
6. Same; power of attorney.
7. Employe for reward.
8. Same for his own benefit.
9. Contract for personal service limited.
10. Must obey employer.
11. Must conform to usage.
12. Reasonable skill.
13. Such skill as is possessed.
14. What belongs to employer.
15. Account to employer.
16. Not deliver without demand.
17. Preference to employer.
18. Substitute strictly responsible.
19. Responsibility for negligence.
20. Surviving employment.
21. Confidential employment.

Termination of Employment.

SECTION.
22. What may terminate employment.
23. Continuance in certain cases.
24. Termination at will.
25. By fault of employe.
26. By employer.
27. Compensation, when dismissed.
28. Service quit for cause.

The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employe, to do something for the benefit of the employer, or of a third person.

Indemnity to employe.

(3407) § **1** An employer must indemnify his employe, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employe, at the time of obeying such directions, believed them to be unlawful.

Co-employes

(3408) § **2**. An employer is not bound to indemnify his employe for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employe.

Employer's negligence.

(3409) § **3**. An employer must in all cases indemnify his employe for losses caused by the former's want of ordinary care.

Gratuitous employment.

(3410) § **4**. One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he

actually enters upon its performance he must use at least slight care and diligence therein.

Same.

(3411) § **5.** One who, by his own special request, induces another to trust him with the performance of a service, must perform the same fully. In other cases one who undertakes a gratuitous service may relinquish it at any time.

Same. power of attorney

(3412) § **6.** A gratuitous employe, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

Duties of employe for reward.

(3413) § **7.** One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

Employe for his own benefit.

(3414) § **8.** One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interests of the latter.

Contract for personal service limited to two years.

(3415) § **9.** A contract to render personal service, other than a contract of apprenticeship, as provided in the title on master and servant, cannot be enforced against the employe beyond the term of two years from the commencement of service under it, but if the employe voluntarily continues his services under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

Must obey employer.

(3416) § **10.** An employe must substantially comply with all the directions of his employer concerning the service on which he is engaged, even though contrary to the provisions of this chapter, except where such obedience is impossible, or unlawful, or would impose new and unreasonable burdens upou the employe, or in case of an emergency, which, according to the best information which the employe can with reasonable diligence obtain, the employer did not contemplate, in which he cannot with reasonable diligence be consulted and in which non-compliance is judged by the employe in good faith, and in the exercise of reasonable discretion, to be absolutely necessary for the protection of the employer's interests. In all such cases the employe must conform as nearly to the directions of his employer as may be reasonably practicable and most for the interest of the latter.

Must conform to usage.

(3417) § **11.** An employe must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

Reasonable skill

(3418) § **12.** An employe is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

Such skill as is possessed.

(3419) § **13.** An employe is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

What belongs to the employer.

(3420) § **14.** Everything which an employe acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment,

(3421) § **15.** An employe must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account. Duty to account to employer.

(3422) § **16.** An employe, who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance without demand, in any mode involving greater risk than its retention by the employe himself. Not to deliver without demand.

(3423) § **17.** An employe, who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. If intrusted with similar affairs by different employers, he must give them preference according to their relative urgency, or other things being equal, according to the order in which they were committed to him. Preference to employer.

(3424) § **18.** An employe who is expressly authorized to employ a substitute, is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal. Substitute strictly responsible.

(3425) § **19.** An employe who is guilty of a culpable degree of negligence, is liable to his employer for the damage thereby caused the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered. Responsibility for negligence.

(3426) § **20.** Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone if the service to be rendered is such as he can rightly perform without the aid of the deceased person but not otherwise. Surviving employe.

(3427) § **21.** The obligations peculiar to confidential employments are defined in the chapter on trusts. Confidential employment.

(3428) § **22.** Every employment, in which the power of the employe is not coupled with an interest in its subject, is terminated by notice to him of: What may terminate employment.

First. The death of the employer; or,

Second. His legal incapacity to contract.

Every employment is terminated:

First. By the expiration of its appointed term.

Second. By the extinction of its subject.

Third. By the death of the employe; or,

Fourth. By his legal incapacity to act as such.

(3429) § **23.** An employe, unless the term of his service has expired, or unless he has a right to discontinue it at any time, without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employe for such service, according to the terms of the contract of employment. Continuance in certain cases.

Termination at will.

(3430) § **24.** An employment, having no specified term, may be terminated at the will of either party, on notice to the other, except where otherwise provided.

By fault of the employe.

(3431) § **25.** An employment, even for a specified term, may be terminated at any time by the employer, in case of any wilful breach of duty by the employe, in the course of his employment, or in case of his habitual neglect of his duty, or continued incapacity to perform it.

Terminated by employer.

(3432) § **26.** An employment, even for a specified term, may be terminated by the employe at any time, in case of any wilful or permanent breach of the obligations of his employer to him as an employe.

Compensation when dismissed.

(3433) § **27.** An employe, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

Service quit for cause.

(3434) § **28.** An employe, who quits the service of his employer for good cause, is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance.

ARTICLE 2.—MASTER AND SERVANT.

SECTION.
1. Definition of servant.
2. Presumed term of employment.
3. Month presumed.
4. Renewal.
5. Domestic service.
6. Accounting to master.
7. Causes for discharge.
8. Apprenticeship authorized.
9. Consent to apprenticeship.
10. Person consenting not liable for breach by apprentice.
11. Poor may be bound to service.
12. Indian child cannot be bound, exception.
13. Age of apprentice must be stated.
14. Consideration must be stated.
15. Education of apppentices.
16. Counterpart of indenture must be filed.
17 Imigrant minor.
18. Indenture must be acknowledged.
19. Assignment of indenture allowed.
20. Indenture must conform to the law.
21. Overseers of the poor.
22. Absence of apprentice.
23. Free vocation.
24. Restraint of vocation; penalty.
25. Deceased master.
26. Consent to assignment.

Definition of servant.

(3435) § **1.** A servant is one who is employed to render personal service to his employer, other than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter who is called his master.

Presumed term.

(3436) § **2.** A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

Month presumed

(3437) § **3.** In the absence of any agreement or custom as to the rate or value of wages, the term of service or the time of payment, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

Renewal presumed.

(3438) § **4.** Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

Domestic service.

(3439) § **5.** The entire time of a domestic servant belongs to the master; and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

Servant must account to his master.

(3440) § **6.** A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound, without orders from his master, to send anything to him through another person.

Causes for discharge,

(3441) § **7.** A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

First. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

Second. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

Apprenticeship authorized.

(3442) § **8.** Male minors, and unmarried females under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may bind themselves, by a writing called an indentnre, as fully as if they were of age, to serve as clerks, apprentices or servants, in a particular calling, until majority (except in the case of females, who cannot bind themselves further than until the age of eighteen), or for any shorter time.

Consent to apprenticeship.

(3443) § **9.** Consent to an indenture of apprenticeship must be given by certificate at the end thereof, or endorsed thereon, signed:

First. By the father and mother of the apprentice.

Second. If the father lacks capacity to consent, or has abandoned or neglected to provide for the family, or is dead, and no testamentary guardian or executor has been appointed by him, with power under the will to bring up the child to a calling, and a certificate of such fact is endorsed on the indenture by a justice of the peace of the county, then by the mother.

Third. If the father is dead, and such guardian or executor has been appointed by him, then by such guardian or executor.

Fourth. If the mother is dead, or lacks capacity to consent, then by the father.

Fifth. If there is no parent of capacity to consent, and no such executor, then by the guardian; or,

Sixth. If there is no such parent, executor or guardian, then by the officers of the poor of the town or county, or by any two justices of the peace of the county, or by the probate judge.

Person consenting not liable for breach of contract.

(3444) § **10.** A parent, executor or guardian, consenting to an indenture, is not liable for a breach thereof by the apprentice,

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unless the indenture or consent expresses an intention to bind him therefor.

Poor may be bound to service,

(3445) § **11.** Any child who is chargeable, or whose parents are chargeable to a county or city poor house, or who is in such poor house may be bound to service uutil attaining twenty-one years, or if a female, until attaining eighteen years, by the proper officers of the poor, as provided in this chapter, but such binding by said officers must be with the consent in writing of the justice of the peace of county, or city.

Indian child cannot be bound; exception.

(3446) § **12.** No child of an Indian woman can be bound, under this title, except in the presence, and with the consent of a justice of the peace; and his certificate of consent must be filed with the probate judge of the county where the indenture is executed.

Age of apprentice must be stated.

(3447) § **13.** In every indenture of apprenticeship the age of the apprentice must be stated, and such statement is presumptive evidence thereof; and before an officer executes an indenture, or consents thereto, he must inform himself of the age of the apprentice.

Consideration must be stated.

(3448) § **14.** If there is any pecuniary consideration, for an indenture of apprenticeship on either part it must be stated therein.

Education required.

(3449) § **15.** The indenture shall also contain an agreement on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture; and that he will give him a new Bible at the expiration of his term of service.

Counterpart of indenture must be filed.

(3450) § **16.** Every officer executing an indenture of apprenticeship must file a counterpart thereof with the probate judge of the county in which he is an officer.

Immigrant minor.

(3451) § **17.** An immigrant minor may bind himself to service until he attains his majority, or for a shorter term, in such manner as may be prescribed by the law of the country in which the contract is made. If the indenture is made for the purpose of enabling him to pay his passage to this country, it may be for the term of one year, although such term extends beyond his majority; but in no case for a longer term.

Indenture must be acknowledged.

(3452) § **18.** Every indenture under section 3451 must be duly acknowledged by the minor on a private examination before a probate judge or a justice of the peace, and a certificate of the acknowledgment, showing that the same was made freely, must be endorsed upon the contract.

Assignment of indenture.

(3453) § **19.** The master, under an indenture specified in section 3451 may assign it by writing indorsed thereon, and with the approval also indorsed of a magistrate mentioned in section 3452.

Indenture must conform to law.

(3454) § **20.** No indenture or contract for the service of an apprentice is binding upon him unless made as hereinbefore prescribed.

Overseers of the poor

(3455) § **21.** The county overseer of the poor, and the overseers of the poor of cities and towns, must see that every appren-

tice or other servant in their respective counties, cities or towns, is properly treated, and that the terms of the contract are fulfilled in his favor; and it is their duty to redress any grievance of such persons in the manner prescribed by law.

Absence of apprentice; penalty.

(3456) § **22.** If an apprentice, for whose instruction the master receives no pecuniary compensation, wilfully absents himself from service without leave, he may be compelled to serve double the time of such absence unless he makes satisfaction for the injury; but such additional term of service cannot extend more than three years beyond the original term.

Free vocation

(3457) § **23.** No person may except from an apprentice or servant an agreement, oath or promise not to exercise his vocation in any particular place; nor may any person exact from an apprentice or servant any consideration for exercising his vocation in any place after his term of service has expired.

Restraint of vocation, penalty.

(3458) § **24.** Any consideration exacted contrary to the last section may be recovered back with interest, and every person accepting such agreement or exacting such consideration, is liable to the apprentice or servant in a penalty of one hundred dollars.

Deceased master.

(3459) § **25.** The executors or administrators of the master of any apprentice bound by officers of the poor, may assign the indenture, with the written consent of the apprentice, acknowledged before a justice of the peace.

Consent to assignment.

(3460) § **26.** If an apprentice refuses consent to an assignment under the last section, the probate or district court may authorize such assignment without his consent, upon application, after fourteen day's notice, to the apprentice, or to his parents or guardian, if he has any in the county.

ARTICLE 3.—SHIPMASTER AND SEAMEN.

Shipmasters.

SECTION.
1. How appointed.
2. Must be on board.
3. Pilotage.
4. Power over seamen.
5 Power over passengers.
6. Private stores taken.
7. May abandon ship.
8. Must take treasure.
9. Cannot trade on own account.
10. Care and diligence.
11. Authority of master.

Mates and Seamen.

SECTION.
12. Mate defined.
13. Seamen defined.
14. Master engages and discharges
15. Unseaworthy vessel.
16 Wages and lien not lost by agreement.
17 Rights not destroyed.
18 Wages due, when.
19. Wages begin, when.
20. Voyage broken up.
21. Wrongful discharge.
22. Wages not lost by wreck.
23. Certificate from master.
24. Disabled on duty.
25- Expense of sickness.
26. Death during voyage.
27. Desertion, theft
28. Can not ship goods.
29. Embezzlement or injury to cargo.
30. Further regulations.

Ship's Managers.

SECTION.
31. Manager defined.
32. Duties of ship manager.
33. Managing owner.

Shipmaster appointed at pleasure of owner.

(3461) § **1**. The master of a ship is appointed by the owner, and holds during his pleasure. The word "ship," as used in this article, shall be construed to mean any boat, vessel or structure fitted for navigation.

Must be on board, when.

(3462) §. **2** The master of a ship is bound to be always on board when entering or leaving port. The word "port," as used in this article, shall be construed to mean any place on a navigable river or lake where a vessel lands to receive or put off freight or passengers, or for any other purpose, and when a vessel has made a landing it is said to be in port.

Pilotage.

(3463) § **3**. Before leaving port the master of a ship must take a pilot on board, and the navigation of the vessel devolves on him.

Power of master over seamen.

(3464) § **4**. The master of a ship may enforce the obedience of the mate and crew to his lawful commands by confinement and other reasonable corporal punishment, not prohibited by law, being responsible for the abuse of his power.

Power over passengers.

(3465) § **5**. The master of a ship may confine any person on board, during a voyage, for wilfull disobedience to his lawful commands.

Private stores may be taken.

(3466) § **6**. If, during a voyage, the ship's supplies fail, the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want, on payment of their value or giving security therefor.

May abandon ship, when

(3467) § **7**. The master of a ship must not abandon it during the voyage, without the advice of the other officers.

Must take treasure.

(3468) § **8**. The master of a ship, upon abandoning it, must carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control, he is exonerated from liability.

Master cannot trade on his own account.

(3469) § **9**. The master of a ship, who engages for a common profit on the cargo, must not trade on his own account, and if he does he must account to his employer for all profits thus made by him.

Must use care and diligence.

(3470) §. **10**. The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight.

Authority of master.

(3471) § **11**. The authority and liability of the master of a ship, as an agent for the owners of the ship and cargo, are regulated by the chapter on agency.

Mate defined.

(3472) § **12**. The mate of a ship is the officer next in command to the master.

Seamen defined.

(3473) § **13**. All persons employed in the navigation of a ship, or upon a voyage, other than the master and mate, are to be deemed seamen, within the provisions of this article.

Master engages and discharges.

(3474) § **14**. The mate and seamen of a ship are engaged by the master, and may be discharged by him at any period of the voyage, for wilful and persistent disobedience, or gross disqualification, but cannot otherwise be discharged before the termination of the voyage.

Unseaworthy vessel.

(3475) § **15**. A mate or seaman is not bound to go on a voy-

age in a ship that is not seaworthy; and if there is a reasonable doubt of its seaworthiness, he may refuse to proceed until a proper survey has been had.

Wages and lien not lost by any agreement.

(3476) § **16.** A seaman cannot by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of a ship, or to abandon any right he may have or obtain in the nature of salvage, is void.

No agreement can destroy rights of seaman, exception.

(3477) § **17.** No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor.

Wages due when freightage is earned.

(3478) § **18.** Except as hereinafter provided, the wages of seamen are due when and so far only as freightage is earned, unless the loss of freightage is owing to the fault of the owner or master.

When wages begin.

(3479) § **19.** The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

Voyage broken up.

(3480) § **20.** Where a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served and may retain for their indemnity such advances as they have received.

Wrongful discharge, may demand full wages.

(3481) § **21.** When a mate or seaman is wrongfully discharged, or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages.

Wages not lost by wreck.

(3482) § **22.** In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo and stores.

Certificate from master.

(3483) § **23.** A certificate from the master or chief surviving officer of a ship, to the effect that a seaman exerted himself to the utmost to save the ship, cargo and stores, is presumptive evidence of the fact.

Disabled while on duty.

(3484) § **24.** Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty or the voyage, on by being wrongfully discharged, or by a capture of a capture of the ship, he is entitled to wages notwithstanding.

Expense of sickness

(3485) § **25.** If a mate or seaman becomes sick or disabled during the voyage without his fault, the expense of furnishing him with suitable medical advice, medicine, attendance, and other provisions for his wants, must be borne by the ship till the close of the voyage.

Death during voyage.

(3486) § **26.** If a mate or seaman dies during a voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

Desertion, theft, etc. forfeits wages.

(3487) § **27.** Desertion of the ship without cause, or a justifi-

able discharge by the master during the voyage for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a wilful injury thereto or to the ship, forfeits all wages due for the voyage to a mate or seaman thus in fault.

Cannot ship goods.

(3488) § **28**. A mate or seaman may not, under any pretext, ship goods on his own account without permission from the master.

Embezzlement or injury.

(3489) § **29**. If any part of the cargo or appurtenances of a ship is embezzled or injured by the mate or a seaman, the offender, or if it is not known which is the offended, all those of whom negligence or fault may be presumed, must make good the loss.

Further regulations.

(3490) § **30**. The shipment of officers and seamen, and their rights and duties, are further regulated by law.

Manager defined.

(3491) § **31**. The general agent for the owners, in respect to the care of a ship and freight, is called the manager; if he is a part owner, he is also called the managing owner.

Duties of ship manager.

(3492) § **32**. Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of the ship, to take care of it in port, to see that it is provided with necessary papers, with a proper master, mate and crew, and supplies of provisions and stores.

Managing owner.

(3493) § **33**. A managing owner is presumed to have no right to compensation for his own services.

ARTICLE 4.—SERVICE WITHOUT EMPLOYMENT.

SECTION.
1. Voluntary interference.
2. Salvage.

Voluntary interference not entitled to compensation.

(3494) § **1**. One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession, for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service, from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

Salvage.

(3495) § **2**. Any person other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances, or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the chapter on liens.

CHAPTER LII.—MIND PRODUCTS.

SECTION.
1. Products of the mind.
2. Joint products.
3. Transfer.
4. Publication.
5. Prior publication.
6. Private letters.

Product of the mind.

(3496) § **1.** The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design; with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product, and the representations or expressions thereof made by him remain in his possession.

Joint products.

(3497) § **2.** Unless otherwise agreed, a product of the mind, in the production of which several persons are jointly concerned, is owned by them as follows:

First. If the product is single, in equal proportions; or,

Second. If it is not single, in proportion to the contribution of each.

Transfer.

(3498) § **3.** The owner of any product of the mind, or of any representation or expression thereof, may tranfer his property in the same.

Publication.

(3499) § **4.** If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person without responsibility to the owner so far as the law of this Territory is concerned.

Prior publication.

(3500) § **5.** If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing, has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author; or those claiming under him.

Private letters.

(3501) § **6.** Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER LIII.—MILITIA.

AN ACT to Provide for the Organization of a Territorial Militia,

[Took effect December 25, 1890.]

SECTION.
1. How organized.
2. Governor to appoint officers.
3. Governor may call.
4. Rules and regulations.
5. Compensation.
6. Auditing board.
7. Payment of bills.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

How organized.

(3502) § **1.** The Governor of the Territory is hereby authorized and empowered to organize such military companies. battalions and regiments in the Territory as he may deem proper and necessary for the safety of the inhabitants of the Territory: *Provided*, There shall not be organized under the authority of this act more than two regiments of infantry and two battalions of cavalry and one battery of artillery: *Provided*, Said militia shall be organized from male citizens of the Territory of between the ages of eighteen years and forty-five years.

Governor to appoint officers.

(3503) § **2.** The Governor may appoint as his military staff one adjutant general and one inspector general with the rank of colonel, two aids de camp with the rank of captain, and one sergeant general with the rank of major, and such number of regimental and company officers as he may deem necessary, one quarter-master general with the rank of major who shall also perform the duties of commissary general and chief of ordnance and who shall give a good and sufficient bond in the sum of five thousand dollars made payable to the Territory of Oklahoma conditional upon the faithful performance of the duties of his office and of accounting for all funds and property coming into his hands and making due returns therefor, said bond to be filed with the Secretary of the Territory.

Governor may call.

(3504) § **3.** The Governor may call the militia to any part thereof organized under authority of this act into active service whenever in his opinion the safety of the inhabitants of the Territory or any part thereof is in danger.

Rules and regulations.

(3505) § **4.** The rules and regulations governing the army of the United States so far as applicable, shall govern the organization and discipline of the militia of this Territory organized under the authority of this act.

Compensation.

(3506) § **5.** The pay and emoluments of the officers and soldiers of the military organizations authorized by this act, while in actual active service, under the order of the Governor, shall be the same as prescribed and allowed for the same rank under the laws of the United States for officers and soldiers of the United States Army: *Provided, however*, That this Territory shall be at no expense for arms and their necessary accoutrements for the equip-

ment of the militia other than the necessary freight, expressage or carriage of such arms and accoutrements. Chap. 54.

Auditing board.

(3507) § **6.** The Territorial Auditor, Territorial Treasurer and Secretary of The Territory are hereby created an auditing board, to audit and allow all accounts and liabilities incurred by said militia organized when in active service by order of the Governor under this provisions of this act.

Payment of bills.

(3508) § **7.** The bills audited and allowed as provided for under the provisions of this act shall be paid in the same manner as other indebtedness of the Territory for current expenses in such manner as such auditing board may prescribe.

CHAPTER LIV.—MORTGAGE.

ARTICLE.
1. Mortgages, realty and personal.

ARTICLE.
2. Pledge.

ARTICLE 1.—MORTGAGES, REALTY AND PERSONAL.

Mortgage in General.

SECTION.
1. Mortgage defined.
2. Mortgage gives special lien.
3 What deemed a mortgage.
4 Bottomry and respondentia not mortgages.
5. Defeasibility may be shown.
6. Rules governing mortgages.
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Mortgage defined; formalities necessary

(3509) § **1.** Mortgage is a contract, by which specific property is hypothecated for the performance of an act without the necessity of a change of possession. A mortgage of real property can be created, renewed or extended only by writing, executed with the formalities required in the case of a grant of real property.

Mortgages gives special lien.

(3510) § **2.** The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

What may be deemed a mortgage.

(3511) § **3.** Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge.

Bottomry and repsondentia not mortgages.

(3512) § **4.** Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this article.

Defeasibility may be proved to show that transfer is a mortgage.

(3513) § **5.** The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved, except as against a subsequent purchaser or incumbrancer, for value and without notice, though the fact does not appear by the terms of the instrument.

Rules governing mortgages.

(3514) § **6.** First. Any interest in property, which is capable of being transfered may be mortgaged.

Second. Title acquired by the mortgagor subsequent to the execution of the mortgage, insures to the mortgagee as security for the debt in like manner as if acquired before the execution.

Third. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

Fourth. The assignment of a debt secured by mortgage carries with it the security.

Mortgage on property adversely held

(3515) § **7.** A mortgage may be created upon property held adversely to the mortgagor. A mortgage of property held adversely to the mortgagor takes effect from the time at which he, or one claiming under him, obtains possession of the property, but has precedence over every lien upon the mortgagor's interest in the property, created subsequently to the recording of the mortgage.

Power of sale may be conferred by mortgage

(3516) § **8.** A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

Power of sale is a trust.

(3517) § **9.** A power of sale under a mortgage is a trust, and as to real property can be executed only in the manner prescribed by civil proceedure.

Power of attorney to execute mortgage

(3518) § **10.** A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

Mortgage is lien upon property that may be passed by grant.

(3519) § **11.** A mortgage is a lien upon everything that would pass by a grant of the property, and upon nothing more.

Mortgage is a lien against any one claiming under mortgage

(3520) § **12.** A mortgage is a lien upon the property mortgaged in the hands of every one claiming under the mortgagor

subsequently to its execution, except purchasers or incumbrancers in good faith, without notice and for value, and, except as otherwise provided by sections from 3536 to 3554 inclusive.

Mortgage does not entitle to possession.

(3521) § **13**. A mortgage does not entitle the mortgagee to the possession of the property unless authorized by the express terms of the mortgage; but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the morgagee's security.

Foreclosure of right of redemption.

(3522) § **14**. A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by civil procedure.

Assignment of mortgage, record; discharge.

(3523) § **15**. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

When assignment is not notice to personal representatives.

(3524) § **16**. When the mortgage is executed as security for money due or to become due on a promissory note, bond, or other instrument designated in the mortgage, the record of the assignment of the mortgage is not of itself notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond, or other instrument.

Discharge by entry in record.

(3525) § **17**. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the register who must certify the acknowledgment in form substantially as follows:

Signed and acknowledged before me, this.....day of....., in the year.....
A. B., Register.

Discharge noted by recording officer, when.

(3526) § **18**. A recorded mortgage, if not discharged as provided in the proceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as is required for transfers, stating that the mortgage has been paid or otherwise satisfied and discharged.

Certificate of discharge recorded at length.

(3527) § **19**. A certificate of the discharge of a mortgage, and a proof or acknowledgment thereof, must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded and in the minute of the discharge made upon the record of the mortgage, to the book and page where the discharge is recorded.

Mortgagee to make certificate of discharge, when

(3528) § **20**. When any mortgage has been satisfied, the mortgagee or his assignee must, immediately on demand of the mortgagor, execute and deliver to him a certificate of the discharge thereof, and must, at the expense of the mortgagor, acknowledge the execution thereof so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or assignee of such mortgage, who refuses to execute and deliver to the mortgagor

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the certificate of discharge, and to acknowledge the execution thereof, or to enter satisfaction or cause satisfaction to be entered of the mortgage, as provided in this chapter, is liable to the mortgagor, or his grantee or heirs for all damages which he or they may sustain by reason of such refusal, and also forfeit to him or them the sum of one hundred dollars.

Form of mortgage of real property

(3529) § **21.** A mortgage of real property may be made in substantially the following form:

This mortgage, made.....day of....., in the year....., by A. B., of .....,mortgagor to C. D., of.....mortgagee, witnesseth

That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of .. ....dollars, on or before the.....day ....., in the year ....., with interest thereon (or as security for the payment of an obligation, describing it, etc.)

A. B,

Mortgage follows the property.

(3530) § **22.** When real property, subject to a mortgage, passes by succession or will, the successor or devisee must satisfy the mortgage out of his own property, without resorting to the executor or administrator of the mortgagor, unless there is an express direction in the will of the mortgagor that the mortgage shall be otherwise paid.

Mortgage executed like grants

(3531) § **23.** Mortgages of real property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants thereof.

Record is notice to subsequent purchasers and incumbrancers.

(3532) § **24.** The record of a mortgage, duly made, operates as notice to all subsequent purchasers and incumbrancers.

Papers accompanying mortgage must be recorded

(3533) § **25.** Every grant of real property, or of any estate therein, which appears by any other writing, to be intended as a mortgage within the meaning of this chapter, must be recorded as a mortgage; and if such grant and other writing explanatory of its true character are not recorded together at the same time and place, the grantee can derive no benefit from such record.

Defeasance must be recorded,

(3534) § **26.** When a grant of real property purports to be an absolute conveyance, but is intended to be defeasable on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the register of deeds of the county where the property is situated.

Form of mortgage of personal property.

(3535) § **27.** A mortgage of personal property may be made in substantially the following form:

This mortgage, made the.....day of..... , in the year..... .....by A, B., of..... .....by occupation a .... mortgagor, to C. D., of ... ., by occupation a..... ..... mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of .....dollars, on (or before) the ....day of..... ....., in the year..... with interest thereon (or security for the payment of a note or obligation describing it, etc.)

A. B.

Foreclosure of mortgage of personal property.

(3536) § **28.** A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the article on pledge, or by proceedings under civil procedure:

Provided, That when the mortgagee, his agent or assignee, has commenced foreclosure by advertisement, and it shall be made to appear by the affidavit of the mortgagor, his agent or attorney, to the satisfaction of the judge of the district court of the county where the mortgaged property is situated, that the mortgagor has a legal counter-claim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on such mortgage, such judge may, by an order to that effect, enjoin the mortgagee, his agent or assignee, from foreclosing such mortgage by advertisement, and direct that all further proceedings for the foreclosure of such mortgage be had in the court properly having jurisdiction of the subject matter.

Foreclosing by advertisement.

(3537) § **29.** A chattel mortgage, when the conditions of the same have been broken, may be foreclosed by a sale of the property mortgaged, upon the notice, and in the manner following: The notice shall contain:

First. The names of the mortgagor and mortgagee, and the assignor, if any.

Second. The date of the mortgage.

Third. The nature of the default and the amount claimed to be due thereon at the date of the notice.

Fourth. A description of the mortgaged property, conforming substantially to that contained in the mortgage.

Fifth. The time and place of sale.

Sixth. The name of the party, agent or attorney foreclosing such mortgage.

Posting notice.

(3538) § **30.** Such notice shall be posted in five public places in the county where the property is to be sold, at least ten days before the time therein specified for such sale.

Mortgagee may be purchaser.

(3539) § **31.** The mortgagee, his assigns, or any other person may in good faith become a purchaser of the property sold.

Attorney's fees.

(3540) § **32.** Such attorney fee as shall be specified in the mortgage may be taxed and made a part of the costs of foreclosure: *Provided*, Such mortgage is foreclosed by an attorney of record of this Territory, and the name of such attorney appears as attorney on the notice of sale, and in no other cases shall an attorney fee be allowed.

Construction of act.

(3541) § **33.** Sections 3537 to 3540 shall not be construed to affect the provisions relating to foreclosures of chattel mortgages by action.

Mortgage of personal property void unless filed.

(3542) § **34.** A mortgage of personal property is void as against creditors of the mortgagor, and subsequent purchasers and incumbrancers of the property in good faith for value; unless the original, or an authenticated copy thereof, be filed by depositing the same in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated.

Filing gives notice to subsequent purchasers and incumbrancers.

(3543) § **35.** The filing of a mortgage of personal property, in conformity to the provisions of this article, operates as notice thereof to all subsequent purchasers and incumbrances of so much of said property as is at the time mentioned in the preceding sec-

tion situated in the county or counties wherein such mortgage or authenticated copy thereof is filed.

Property in transit or of carrier considered to be where

(3544) § **36**. For the purposes of this article property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used. For a like purpose personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

Mortgage of personal property valid only when filed.

(3545) § **37**. A single mortgage of personal property, embracing several things of such character or so situated, that by the provisions of this article, separate mortgages upon them would be required to be filed in different counties, is only valid in respect to the things as to which it is duly filed; but a copy of the original mortgage may be authenticated by the register of deeds in whose office it is filed, and such copy to be filed in any other county with the same effect as to the property therein that the original could have been.

Filing is valid for three years, renewal

(3546) § **38**. A mortgage of personal property ceases to be valid as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith after the expiration of three years from the filing thereof, unless within thirty days next preceding the expiration of such term, a copy of the mortgage and a statement of the amount of existing debt for which the mortgagee or his assignee claims a lien, sworn to and subscribed by him, his agent or attorney, are filed anew in the office of the register of deeds, in the county in which the mortgagor then resides, and in like manner the mortgage and statement of debt must be again filed every three years, or it ceases to be valid as against the parties above mentioned.

Execution of mortgage of personal property

(3547) § **39**. A mortgage of personal property must be signed by the mortgagor in the presence of two persons, who must sign the same as witnesses thereto, and no further proof or acknowledgment is required to admit it to be filed.

How mortgages filed, careful custody; cancelled.

(3548) § **40**. The register of deeds of each of the several counties must receive and file all such instruments as are offered to him and must keep the same in his office in regular and orderly file, for the public information, and must not permit them, or any of them, to be removed from his office until cancelled. Every such mortgage may be cancelled by the register of deeds upon the presentation to him of a receipt for the sum, money or property secured, or an acknowledgment of satisfaction thereof, signed by the mortgagee.

Registry index.

(3549) § **41**. Every register of deeds with whom any such mortgage or authenticated copy thereof is filed, must indorse a number upon the same in regular order, together with the time of receiving the same, and must enter the name of every party thereto in a book kept for that purpose, alphabetically, placing mortgagors and mortgagees under a separate head, and stating in separate colums, opposite each name, the number indorsed up-

on the mortgage, the date thereof, and of the filing, the amount secured thereby, a brief of the substance thereof not otherwise entered, and at the time at which it is due. A mortgage is not to be deemed defectively filed by reason of any errors in the copy filed, which do not tend to mislead a party interested; and the negligence of the officer with whom a mortgage is filed does not prejudice the rights of the mortgagee.

Mortgagee may take property, when

(3550) § **42**. If the mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due.

Property may be attached.

(3551) § **43**. Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of a mortgagor.

Mortgagee's rights.

(3552) § **44**. Before the property is so taken, the officer must pay or tender to the mortagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county treasurer, payable to the order of the mortgagee.

Proceeds of sale applied, how.

(3553) § **45**. When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

First. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

Second. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

Mortgage of ships.

(3554) § **46**. No mortgage of any ship or vessel, or part thereof, of the United States, shall be valid against any person (other than the mortgagor, his heirs and devisees, and the persons having actual notice thereof,) unless such mortgage is recorded in the office of the collector of the customs where such vessel is registered or enrolled.

Sections 3541 to 3552 inclusive, do not therefore apply to any mortgage of a ship or vessel (or any part thereof), which is required as above, by act of Congress, to be recorded in a particular place or manner.

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4.	Increase pledged with property.
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10	Exoneration of pledgeholder.
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18.	Notice of sale waived.
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20.	Sale by public auction.
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22.	Sale may be required.
23.	Proceeds of sale.
24.	Sale before due.
25.	Pledgeholder cannot purchase.
26.	Foreclosure of right of redemption.

Pledge defined.

(3555) § **1**. Pledge is a deposit of personal property by way of security for the performance of another act.

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What deemed a pledge.

(3556) § **2.** Every contract by which the posession of personal property is transferred, as a security only, is to be deemed a pledge.

Possession necessary to validity of pledge

(3557) § **3.** The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledgeholder, as hereafter prescribed.

Increase pledged with property

(3558) § **4.** The increase of property pledged is pledged with the property.

Lien may be pledged.

(3559) § **5.** One who has a lien upon property may pledge it to the extent of his lien.

Pledge by apparent owner

(3560) § **6.** One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

Property pledged for another person

(3561) § **7.** Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor or for himself, except as hereinafter stated.

Pledgeholder may be selected

(3562) § **8.** A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledgeholder.

Property pledged for another cannot be withdrawn

(3563) § **9.** One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgor for himself might; and, if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

Exoneration of pledgeholder.

(3564) § **10.** A pledgehelder for reward cannot exonerate himself from his undertaking; and a gratuitous pledgeholder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledgeholder, and, in case of their failure to agree, by depositing the property pledged with some impartial person who will then be entitled to a reasonable compensation for his care of the same.

Duties of pledgeholder.

(3565) § **11.** A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

Pledgee and pledgeholder are depositaries.

(3566) § **12.** A pledgee or pledgeholder for reward assumes the duties and liabilities of a depositary for reward.

Same

(3567) § **13.** A gratuitous pledgeholder assumes the duties and liabilities of a gratuitous depositary.

Fraudulnet mis-representation of value of property pledged.

(3568) § **14.** Where a debtor has obtained a credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually done.

Sale of property pledged.

(3569) § **15.** When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

Demand necessary

(3570) § **16.** Before property pledged can be sold, and after

performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

Actual notice must be given to pledgor.

(3571) § **17**. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale, as will enable the pledgor to attend.

Notice of sale may be waived.

(3572) § **18**. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

How waiver made.

(3573) § **19**. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due, but cannot waive it in any other manner except by contract.

Sale must be by public auction.

(3574) § **20**. The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property, and must be for the highest obtainable price.

Cannot sell evidence of debt.

(3575) § **21**. A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states or corporations; but he may collect the same when due.

Sale may be required

(3576) § **22**. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

Proceeds of sale, how disposed of.

(3577) § **23**. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses, of sale and collection; and must pay the surplus to the pledgor, on demand.

Same.

(3578) § **24**. When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

Pledgee cannot purchase property except, how.

(3579) § **25**. A pledgee or pledgeholder cannot purchase the property pledged, except by direct dealing with the pledgor.

Foreclosure right of redemption

(3580) § **26**. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER LV.—NEGOTIABLE INSTRUMENTS.

ARTICLE.
1. Negotiable instruments in general.
2. Bills of exchange.
3. Promissory notes.
4. Checks.
5. Bonds, bank notes and certificates of deposit.

ARTICLE 1.—NEGOTIABLE INSTRUMENTS IN GENERAL.

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Extinction of Negotiable Instruments.

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Scope of this article.

(3581) § **1**. The provisions of this article apply only to negotiable instruments as defined herein.

Negotiable instrument defined.

(3582) § **2**. A negotiable instrument is a written promise or request for the payment of a certain sum of money, to order or bearer.

Must be payable in money and must be certain.

(3583) § **3**. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

Payee must be certain.

(3584) § **4**. The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made.

Payment of money or performance of other act.

(3585) § **5**. A negotiable instrument may give to the payee an option between the payment of the sum specified therein, and the performance of another act; but as to the latter the instrument is not within the provisions of this article.

Date, place and time.

(3586) § **6**. A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.

Collateral security.

(3587) § **7**. A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

Must be single contracts.

(3588) § **8**. A negotiable instrument must not contain any other contract than such as is specified in this article.

Date may be nominal.

(3589) § **9**. Any date may be inserted by the maker of a negotiable instrument, whether past, present or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

Classes of negotiable instruments.

(3590) § **10**. There are six classes of negotiable instruments, namely:

First. Bills of exchange.
Second. Promissory notes.
Third. Bank notes.
Fourth. Checks.
Fifth. Bonds.
Sixth. Certificates of deposit.

When payable.

(3591) § **11**. A negotiable instrument which does not specify the time of payment, is payable immediately.

Where payable.

(3592) § **12**. A negotiable instrument which does not specify a place of payment, is payable at the residence or place of business of the maker, or wherever he may be found.

To whom payable.

(3593) § **13**. An instrument otherwise negotiable in form,

payable to a person named, but adding the words, "or to his order," or "or to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and the latter case payable to the bearer.

Payable to maker or fictitious person is payable to bearer.

(3594) § **14.** A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement has the same effect against him and all other persons having notice of the facts, as if payable to the bearer.

Same.

(3595) § **15.** A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer.

Consideration presumed.

(3596) § **16.** The signature of every drawer, acceptor and indorser of a negotiable instrument, is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business.

Indorsement defined.

(3597) § **17.** One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it with his name thereon to another person, is called an indorser, and his act is called indorsement.

Agreement to indorse.

(3598) § **18.** One who agrees to indorse a negotiable instrument, is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

May be on annexed paper.

(3599) § **19.** When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

Classes of indorsement.

(3600) § **20.** An indorsement may be general or special.

General indorsement.

(3601) § **21.** A general indorsement is one by which no indorsee is named.

Special indorsement.

(3602) § **22.** A special indorsement specifies the indorsee.

General may be changed to special.

(3603) § **23.** A negotiable instrument bearing a general indorsement, cannot be afterwards specially indorsed; but any lawful holder, may turn a general indorsement into a special one by writing above it a direction for the payment to a particular person.

Special indorsement may destroy negotiability.

(3604) § **24.** A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

Warranties implied.

(3605) § **25.** Every indorser of a negotiable instrument warrants to every subsequent holder thereof who is not liable thereon to him:

First. That it is in all respects what it purports to be,

Second. That he has a good title to it.

Third. That the signature of all prior parties are binding upon them.

Fourth. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay the same in full, with interest, unless exonerated under the provisions of sections 3656, 3693 or 3695.

Liability of indorser before delivery.

(3606) § **26.** One man who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee, thereon, as an indorser.

Qualified indorsement.

(3607) § **27.** An indorser may qualify his indorsement with the words "without recourse," or equivalent words; and upon such indorsement he is responsible only to the same extent as in the case of a transfer without indorsement.

Same.

(3608) § **28.** Except as otherwise prescribed by the last section, an endorsement without recourse has the same effect as any other indorsement.

Prior indorsers.

(3609) § **29.** An endorsee of negotiable instrument has the same rights against every prior party thereto, that he would have had if the contract had been made directly between them in the first instance.

Indorser has rights of guarantor.

(3610) § **30.** An indorser has all the rights of a guarantor, as defined by article one of chapter 39, and is exonerated from liability in like manner.

Accommodation in indorser has rights of surety

(3611) § **31.** One who indorses a negotiable instrument, at the request and for the accommodation of another party to the instrument, has all the rights of a surety, as defined by article two of chapter 39, and is exonerated in like manner, in respect to every one having notice of the facts, except that he is not entitled to contribution from subsequent indorsers.

Want of consideration does not exonerate as against indorsee in good faith,

(3612) § **32.** The want of consideration for the undertaking of a maker, acceptor or indorser of a negotiable instrument, does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

Indorsee in due course defined

(3613) § **33.** An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

Indorsee in due course acquires absolute title.

(3614) § **34.** An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

Blank indorsement.

(3615) § **35.** One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

Demand not necessary.

(3616) § **36.** It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument, in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

Presentment of negotiable instrument.

(3617) § **37.** Presentment of a negotiable instrument for payment when necessary must be made as follows, as nearly as by reasonable diligence it is practicable:

First. The instrument must be presented by the holder.

Second. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should

be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there.

Third. An instrument which specifies a place for its payment must be presented there, and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein.

Fourth. An instrument which does not specify a place for its payment must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presentor; and.

Fifth. The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and, if it be payable at a banking house within the usual banking hours of the vicinity, but by the consent of the person to whom it should be presented, it may be presented at any hour of the day.

Sixth. If the principal debtor have no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is executed.

Apparent maturity.

(3618) § **38.** The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which by its terms it becomes due; or, when that is a holiday, the next business day.

Presumed dishonor.

(3619) § **39.** A bill of exchange is payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

Maturity of bill of exchange defined.

(3620) § **40.** The apparent maturity of a bill of exchange, payable at sight or on demand, is:

First. If it bears interest, one year after its date; or,

Second. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Apparent maturity of promissory note.

(3621) § **41.** The apparent maturity of a promissory note payable at sight or on demand, is:

First. If it bears interest, one year after its date; or,

Second. If it does not bear interest, six months after its date.

Time added.

(3622) § **42.** Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

Payer may require certain conditions.

(3623) § **43.** A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

First. That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or,

Second. If the holder has a right to retain the instrument, and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,

Third. If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

Dishonor defined.

(3624) § **44**. A negotiable instrument is dishonored when it is either not paid or not accepted, according to its tenor, on presentment for the purpose, or without presentment, where that is excused.

Notice of dishonor, how given.

(3625) § **45**. Notice of the dishonor of a negotiable instrument may be given:

First. By a holder thereof; or,

Second. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

Form of notice.

(3626) § **46**. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored.

Notice served how.

(3627) § **47**. A notice of dishonor may be given:

First. By delivering it to the party to be charged, personally, at any place; or,

Second. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,

Third. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the postoffice most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

Service of notice after death.

(3628) § **48**. In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or if there are none, then to any member of his family who resided with him at his death; or if there is none, then it must be mailed to his last place of resience, as prescribed by subdivision 3 of the last section.

Service after death, when valid

(3629) § **49**. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

If notice not given by mail.

(3630) § **50**. Notice of dishonor, when given by the holder of an instrument, or his agent, otherwise then by mail, must be given on the day of dishonor, or on the next business day thereafter.

Notice by mail.

(3631) § **51**. When notice of dishonor is given by mail it must be deposited in the postoffice in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

Notice given by agent.

(3632) § **52**. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

Notice to prior parties

(3633) § **53**. Every party to a negotiable instrument receiv-

ing notice of its dishonor, has the like time thereafter to give similar notice to prior parties, as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

Notice benefits all persons.

(3634) § **54.** A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto, whose right to give the like notice has not then been lost.

Notice of dishonor is excused by what.

(3635) § **55.** Notice of dishonor is excused:

First. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or,

Second. When there is no postoffice communication between the town of the party by whom the notice should be given, and the town in which the place of residence or business of the party to be charged is situated; or,

Third. When the party to be charged is the same person who dishonors the instrument; or,

Fourth. When the notice is waived by the party entitled thereto.

Presentment is excused by what.

(3636) § **56.** Presentment and notice are excused as to any party to a negotiable instrument, who informs the holder, within ten days before its maturity, that it will be dishonored.

Security excuses presentment and notice.

(3637) § **57.** If, before or after the maturity of an instrument, an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

Delay excused when.

(3638) § **58.** Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

Waiver of presentment.

(3639) § **59.** A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

Waiver of protest.

(3640) § **60.** A waiver of protest on any negotiable instrument other than a foreign bill of exchange, waives presentment and notice.

Obligation extinguished, how.

(3641) § **61.** The obligation of a party to a negotiable instrument is extinguished:

First. In like manner with that of parties to contracts in general; or,

Second. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof, and appearing by its terms, to be entitled to payment.

How obligation revived.

(3642) § **62.** If, after its extinction, a negotiable instrument comes into the possession of an indorsee in due course, the obligation thereof revives in his favor.

Form and Interpretation of a Bill.

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2. Additional drawee.
3. May be drawn in sets.
4. Drawn in three parts.
5. One part for whole.
6. Place of payment.
7. Drawer's rights.

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8. Days of grace allowed, when.

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SECTION.
9 Presentment for acceptance.
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Chap. 55.

Bill of exchange defined.

(3643) § **1.** A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

Additional drawee.

(3644) § **2.** A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

May be drawn in sets.

(3645) § **3.** A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

Drawn in three parts

(3646) § **4.** An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

One part for whole.

(3647) § **5.** Presentiment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

Place of payment.

(3648) § **6.** A bill of exchange is payable:

First. At the place where, by its terms, it is made payable; or,

Second. If it specify no place of payment, then at the place to which it is addressed; or,

Third. If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment.

Drawer's rights.

(3649) § **7.** The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument.

Days of grace allowed on what instruments

(3650) § **8.** Days of grace are allowed unless there be an express stipulation to the contrary, as follows:

First. On all bills of exchange, or drafts, payable at sight, whether foreign or inland, the party or parties upon whom the same are drawn shall have three days of grace after presentation for payment of the same; but Sundays and holidays are excluded from the computation of the aforesaid days of grace.

Second. The like days of grace, to be computed as above, shall be allowed for the payment of all promissory notes, bills of exchange, and drafts, on the face of which time is given or specified; and,

Third. Notes due on demand shall also be subject to the like days of grace, in manner as aforesaid, ofter demand it made for the payment of the same.

Presentment for acceptance.

(3651) § **9.** At any time before a bill of exchange is payable, the holder may present it to the drawee for acceptance, and if acceptance is refused the bill is dishonored.

Manner of Presentment.

(3652) § **10.** Presentments for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

First. The bill must be presented by the holder or his agent.

Second. It must be presented on a business day, and within reasonable hours.

Third. It must be presented to the drawee, or, if he be absent

from his place of residence or business, to some person having charge thereof, or employed therein; and,

Fourth. The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance.

Presentment to one of several joint drawers.

(3653) § **11.** Presentment for acceptance to one of the several joint drawees, and refusal by him, dispenses with presentment to the others.

Drawee in need, presentment must be made to him.

(3654) § **12.** A bill of exchange which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

Presentment must be made within ten days.

(3655) § **13.** When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

Acceptance must be made in writing.

(3656) § **14.** An acceptance of a bill must be made in writing by the drawee, or by an acceptor for honor; and may be made by the acceptor writing his name across the face of the bill with or without other words.

Holder may treat bill as dishonored if acceptance is qualified.

(3657) § **15.** The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.

What deemed a sufficient acceptance

(3658) § **16.** The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

First. An acceptance written upon any part of the bill, or upon a separate paper.

Second. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town, in which, if the acceptance was unqualified, it would be payable; or,

Third. A refusal by the drawee to return the bill to the holder after presentment; in which case the bill is payable immediately, without regard to its terms.

Acceptance upon separate piece of paper.

(3659) § **17.** The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who upon the faith thereof, has the bill for value or other good consideration.

Unconditional promise to accept is sufficient when.

(3660) § **18.** An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who, upon the faith thereof, has taken the bill for value or other good consideration.

Cancellation of acceptance.

(3661) § **19.** The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance.

What acceptance admits.

(3662) § **20.** The acceptance of a bill of exchange admits the

signature of the drawer, but does not admit the signature of any indorser to be genuine.

Bill may be accepted by any person after dishonor.

(3663) § **21.** On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

Holder not bound to allow acceptance for honor, but must accept payment.

(3664) § **22.** The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

Acceptance for honor must be made, how.

(3665) § **23.** An exceptor or payor for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them.

Acceptance for honor, how enforced

(3666) § **24.** A bill of exchange which has been accepted for honor, must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor in like manner as to an indorser; after which the acceptor for honor must pay the bill.

Notice of dishonor must be given.

(3667) § **25.** The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

Where presentment for payment must be made

(3668) § **26.** If a bill of exchange is by it terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

Same, on acceptance.

(3669) § **27.** A bill of exchange accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere.

Reasonable diligence must be shown,

(3670) § **28.** If a bill of exchange, payable at sight, or on demand, without interest, is not duly presented for payment, within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

Mere delay does not exonerate

(3671) § **29.** Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party thereto.

Lack of capacity to accept

(3672) § **30.** The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

Delay beyond control of holder.

(3673) § **31.** Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

When acceptance and payment are forbidden

(3674) § **32.** Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

Inland bill defined.

(3675) § **33.** An inland bill of exchange is one drawn and payable within this Territory. All others are foreign.

(3676) § **34**. Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest. Protest of foreign bill necessary.

(3677) § **35**. Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses. Protest made by whom.

(3678) § **36.** Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made, the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and finally protesting against all the parties to be charged. Form of protest.

(3679) § **37**. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment. Place where protest is made

(3680) § **38.** A protest must be noted on the day of the presentment, or on the next business day; but it may be written out at any time thereafter. Protest noted on day of presentment

(3681) § **39**. The want of protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment. Protest excused by what.

(3682) § **40**. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest. Notice of protest, how given.

(3683) § **41.** If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill, except that if any indorser of such a bill expressly requires protest to be made by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers. Where bill waives protest.

(3684) § **42**. One who pays a foreign bill of exchange for honor must declare before the payment in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement. Declaration for honor.

(3685) § **43**. Damages are allowed as herein after prescribed, as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages in favor of holders for value only, upon bills of exchange drawn or negotiated within this Territory, and protested for non-acceptance or non-payment, Damages on bills protested for non-acceptance and non-payment.

(3686) § **44**. Damages are allowed under the last section upon bills drawn upon any person: Rates of damages

First. If drawn upon any person in this Territory, two dollars upon each one hundred dollars of the principal sum specified in the bill.

Second. If drawn upon any person out of this Territory, but in the states of Nebraska, Iowa, Minnesota, Wisconsin, Illinois and Missouri, or in the Territory of Montana, three dollars upon each one hundred dollars of the principal sum specified in the bill.

Third If drawn upn any person in any of the United States

or territories other than those above named, five dollars upon each hundred dollars of the principal sum specified in the bill.

Fourth. If drawn upon any person in any place in a foreign country, ten dollars upon each hundred dollars of the principal sum specified in the bill.

And from the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned as above.

If bill in United States money, foreign money.

(3687) § **45.** If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange. If the the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

ARTICLE 3.—PROMISSORY NOTES.

SECTION.	SECTION.
1. Promissory note defined.	3 Bill accepted by other than drawee.
2. Bill drawn upon and accepted by drawer.	4, Laws applicable
	5. Delay in presentment.

Promissory note defined.

(3688) § **1.** A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money.

Bill drawn upon and accepted by drawer is a promissory note.

(3689) § **2.** An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

Bill accepted by other than drawee becomes note.

(3690) § **3.** A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

What laws are applicable.

(3691) § **4.** Article 1 of this chapter, and sections 3651 and 3672 apply to promissory notes.

Delay in presentment exonerates indorsers.

(3692) § **5.** If a promissory note, payable on demand or at sight without interest, is not duly presented for payment within six months of its date, the indorsers thereof are exonerated unless such presentment is excused.

ARTICLE 4.—CHECKS.

SECTION.	SECTION.
1. Check defined.	2. Check like bill of exchange.

Check defined.

(3693) § **1.** A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand without interest.

Check like bill, exceptions.

(3694) § **2.** A check is subject to all the provisions of this chapter concerning bills of exchange, except that:

First. The drawer and endorsers are exonerated by delay in

Second. An endorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

Third. No days of grace are allowed on checks.

ARTICLE 5.—BONDS, BANK NOTES AND CERTIFICATES OF DEPOSIT.

SECTION.
1 Bank note negotiable.
SECTION.
2. Known dishonor.

Bank note remains negotiable.

(3695) § **1.** A bank note remains negotiable, even after it has been paid by the maker.

Known dishonor.

(3696) § **2.** A transferee of a bond, bank note or certificate of deposit, after its apparant maturity or actual dishonor within his knowledge, acquires a title equal to that of a transferee before such event.

Except where it is otherwise declared, the foregoing provisions of this chapter, in respect to the rights and obligations of parties to contracts are subordinate to the intention of the parties, when ascertained in the manner prescribed by the article on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

CHAPTER LVI.—NUISANCE.

SECTION.		SECTION.	
1.	Nuisance defined.	9.	By indictment.
2.	Public nuisance.	10.	By civil action.
3.	Private nuisance,	11.	How abated.
4.	Statute authority.	12.	Same, by removal or destruction.
5.	Successive owners neglecting to abate nuisance.	13.	Remedies against private nuisances.
6.	Abatement does not preclude damages.	14.	How person may abate.
7.	Time does not legalize public nuisance.	15.	When notice is required.
8.	Remedies against public nuisance.	16.	Nuisance defined.
		17.	Putting dead animal in stream.
		18.	Leaving carcass unburied.
		19.	Packers liable for what.

Nuisance defined.

(3697) § **1.** A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

First. Annoys, injures or endangers the comfort, repose, health, or safety of others; or,

Second. Offends decency; or.

Third. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,

Fourth. In any way renders other persons insecure in life, or in the use of property.

Public nuisance

(3698) § **2.** A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

Private nuisance

(3699) § **3.** Every nuisance not included in the definition of the last section is private.

Statute authority.

(3700) § **4.** Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

Successive owners neglecting to abate nuisance.

(3701) § **5.** Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

Abatement does not preclude damages

(3702) § **6.** The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

Time does not legalize public nuisance.

(3703) § **7.** No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

Remedies against public nuisance

(3704) § **8.** The remedies against a public nuisance are:

First. Indictment.

Second. A civil action; or,

Third. Abatement.

By indictment

(3705) § **9.** The remedy by indictment is regulated by the law on crimes and punishment and criminal procedure.

By civil action.

(3706) § **10.** A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise.

How abated.

(3707) § **11.** A public nuisance may be abated by any public body or officer authorized thereto by law.

(3708) § **12.** Any person may abate a public nuisance which is specially injurious to him, by removing or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace or doing unnecessary injury. Same.

(3709) § **13.** The remedies against a private nuisance are: Remedies against private nuisance.

First. A civil action; or,

Second. Abatement.

(3710) § **14.** A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. How person may abate

(3711) § **15.** Where a private nuisance results from a mere omission of the wrong-doer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it. When notice is required.

AN ACT to prevent public nuisances and fixing penalties for maintaining the same.

[Took effect December 25, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

(3712) § **16.** It shall be unlawful for any person or persons or corporations to put any dead animal, carcass, or part thereof, into any well, spring, brook or branch of running water of which use is made for domestic purposes; every person or persons so offending shall, on conviction thereof, be fined in any sum not less than five nor more than one hundred dollars. Nuisance defined, penalty.

(3713) § **17.** Any person or persons or corporations who shall put any dead animal or any part of the carcass of a dead animal into any river, creek or pond, shall upon conviction thereof be fined in any sum not less than two nor more than twenty-five dollars. Putting dead animal in stream.

(3714) § **18.** If any person or persons or corporations shall put any dead animal or any part of a carcass of a dead animal in any road, street, alley, lane, lot, field meadow, common or school section, without burying the same not less than two feet below the level of the surface of the earth, or if the owner or owners thereof shall knowingly permit the same to remain in any of the aforesaid places, without such burial as aforesaid to the injury of the health, or to the annoyance of the citizens of this Territory, or any of them, every such person so offending shall on conviction thereof before any justice of the peace of the county, be fined in a sum not less than five nor more than twenty-five dollars, and every twenty-four hours during which said owner may knowingly permit the same to remain unburied thereafter shall be deemed an additional offense against the provisions of this act. Leaving carcass unburied.

(3715) § **19.** If any owner or owners, occupier or occupiers of any slaughter house, or any premises where hogs, beeves or other animals are slaughtered, shall permit the same to remain unclean, to the annoyance of the citizens of this Territory, or any of them, every person so offending shall be fined upon conviction for every Packers liable for what.

Chap. 57. such offense in any sum not less than five nor more than twenty-five dollars, and if said nuisance be not removed within five days thereafter, it shall be deemed a second offense against the provisions of this act.

CHAPTER LVII.—NORMAL SCHOOL.

AN ACT to Locate and Establish the Normal School for the Territory of Oklanoma.

[Took effect December 25, 1890.]

SECTION.
1. Location; branches taught.
2. By whom governed.
3. Board of education.
4 Appointment of officers and teachers.
5. Admission, rules for.
6. Board shall appoint committee to examine school.
7. Pupils examined, when.
8. Custodian of funds
9. Examiners and employes, how paid.
10. Board of education, vacancy.
SECTION.
11. Same, meetings.
12. Same, clerk.
13. Pupils, guardianship of.
14. Establishing and supporting school
15. Bonds may issue for.
16. Commission to plat and sell land.
17. Compensation of commissioners.
18. Buildings occupied, when
19. Commissioner's bond.
20. Bonds shall issue when.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Location, branches taught.

(3716) § **1.** The Normal School for the Territory of Oklahoma is hereby located and established at or within one mile of the village of Edmond in the county of Oklahoma in said Territory, the exclusive purposes of which shall be the instruction of both male and female persons in the art of teaching and in all the various branches that pertain to a good common school education, also to give instruction in the theory and practice of teaching, in the fundamental laws of the United States, and in what regards the rights and duties of citizens.

By whom governed.

(3717) § **2.** The said Normal School shall be under the direction of a board of education and shall be governed and supported as hereinafter provided.

Board of education,

(3718) § **3.** Said board of education shall consist of five members, three of whom shall be appointed by the Governor and by and with the consent of the Legislative Council if in session, one of whom shall hold his office for six years, another for four years, and another for two years. The Governor shall designate which person shall hold his office for six years, which for four years and which for two years. The Territorial Treasurer and Superintendent of Public Instruction shall by virtue of their offices be members of said board. The Territorial Treasurer by virtue of his office shall be treasurer of said board and the members thereof shall annually elect from their members, a president and secretary. It shall be the duty of the secretary to keep an exact and detailed account of the doings of said board, and he shall make such reports to the Legislature as are required by this act.

(3719) § **4.** Said board of education shall have power to appoint a principal and assistant to take charge of said school, and such other teachers and officers as may be required in said school, and fix the salary of each and prescribe their several duties. They shall also have power to remove either the principal, assistant, or teachers and appoint others in their stead. They shall prescribe the various books to be used in said school and shall make all the regulations and by-laws necessary for the good government and management of the same.

Appointment of officers and teachers; salaries.

(3720) § **5.** The said board of education shall ordain such rules and regulations for the admission of pupils to said school as they shall deem necessary and proper. Every applicant for admission shall undergo an examination in such manner as shall be prescribed by the board and the board may in their discretion, require an applicant for admission into said school other than such as shall prior to such admission sign and file with said board a declaration of intention to follow the business of teaching schools in this Territory, to pay or secure to be paid such fees or tuition as to said board shall seem reasonable.

Admission, rules for.

(3721) § **6.** After said Normal School shall have commenced its first term, and at least once in each year thereafter, it shall be visited by three suitable persons, not members, to be appointed by the board of education who shall examine thoroughly the affairs of the school and report to the superintendent of public instruction or Auditor their views in regard to its condition, success and usefulness, and any other matters they may judge expedient. Such visitors shall be appointed annually.

Pupils examined, when.

(3722) § **7.** As soon as any person has attended said institution twenty-two weeks, said person may be examined in the studies, required by the board, in such manner as may be prescribed by them, and if it shall appear that such person possesses the learning and other qualifications necessary to teach a good common school, said person shall receive a certificate,

Custodian of funds.

(3723) § **8.** All funds appropriated for the use and benefit of said Normal School shall be under the direction and control of the board of education, subject to the provisions herein contained. The Treasurer of the Territory shall pay out of such funds all orders or drafts for money to be expended under the provisions of this act, such orders or drafts to be drawn by the Territorial Auditor or on certificates of the Secretary, countersigned by the president of the board. No such certificates shall be given except on accounts audited and allowed by the board at their regular meetings.

Board shall appoint committee to examine school.

(3724) § **9.** Services and all necessary travelling expenses, as hereinafter provided incurred by members of the board of education in carrying out the provisions of this act, shall be paid on the proper certificate out of any funds belonging to said institution in the hands of the Treasurer, until the erection and completion of the necessary buildings. The principal assistants, teachers, board of education, and other officers employed in said school, shall be paid out of normal school fund, and from receipts for tuition after the erection of necessary buildings. The members of the board

Examiners and employes, how paid.

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of education shall be entitled to three dollars per day and ten cents per mile actually and necessarily travelled in attending meetings of the board.

Board of education, vacancy.

(3725) § **10.** It shall be the duty of the Governor to fill by appointment all vacancies that may from any cause occur in the board of education of the Territorial Normal School, and he may, for neglect of duty, or any violation of trust reposed, or the arbitrary exercise of the power conferred, remove any member of said board and appoint a suitable person in his stead.

Same, meetings.

(3726) § **11.** The board of education shall hold four regular meetings in each year, viz: during the first week in April, the first week in July, tbe first week in October, tne first week in January in each year, at which second meeting the officers of the board shall be elected. All meetings of the board shall be held at Edmond and when practicable in the Normal School building. All financial matters, allowance, claims and accounts, shall be disposed of at such regular meetings only. Special meetings of the board may be called upon the written order of the president of the same, which order shall specify the object of the meeting. A majority of the board shall constitute a quorum to transact business. A true and faithful journal of their proceedings shall be kept, subject at any reasonable time to the inspection of any member of the board.

Same, clerk.

(3727) § **12.** The clerk of the board of education shall on the first day of January of each year transmit to the Governor a full report of the expenditures of the same for the previous year, setting forth in full each item and the date thereof.

Pupils, guardianship of.

(3728) § **13.** The board of education in their regulations, and the principal in his supervision and government of the school shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance on the same, but no religious or sectarian tests shall be applied in the selection of teachers, and none shall be adopted in the school.

Establishing and supporting school.

(3729) § **14.** For the purpose of locating and supporting said institution there shall be furnished forty acres of land, lying within one mile of said village of Edmond which shall without cost to the Territory, be conveyed by good and sufficient warranty deed to the board of education in this act designated, for the use and benefit of said institution; ten acres of said land, shall be reserved as a site on which to erect buildings for said institution and the remainder shall be laid into lots and blocks, and disposed of for cash, for the use and benefit of such institution.

Bonds may issue for.

(3730) § **15.** In addition thereto, the county commissioners of said county of Oklahoma, are hereby authorized and directed to issue the bonds of said county for the sum of five thousand dollars due and payable in twenty years from date thereof and drawing seven per cent interest payable annually, and when so executed said board of commissioners shall deliver said bonds to the Territorial Treasurer and he shall sell the same, at not less than ninety-five cents on the dollar, and shall hold the proceeds thereof as a fund, out of which to erect buildings on said land. The

proceeds of the lots sold, shall likewise be paid, to the treasurer, and be by him held for the same purpose, and for the further purpose of paying the expenses of the commissioners, designated to erect such institution.

Commission to plat and sell land.

(3731) § **16.** It shall be the duty of the Governor within ninety days after the passage and approval of this act, to appoint three discreet persons, one of them residing in said village of Edmond, as commissioners, to select the land, plat and make sale thereof and to make all contracts for the erection of buildings, and who shall draw orders upon the fund in the hands of the Territorial Treasurer for the payment of such buildings, and when such orders are duly approved by the Territorial Auditor, it shall be the duty of the Territorial Treasurer to pay them from the Normal School fund in his hands: *Provided, however,* That no contracts shall be made by said commissioners to erect buildings or incur expenses to be paid from any other source than from the money deposited with the Territorial Treasurer arising from the sale of the bonds and lots before mentioned, nor in excess of the amount of the funds so realized. Such commissioners may make deeds for all the lots sold which must be sold for cash at a price fixed thereon by the board of education, but all payments therefor shall be made to the Territorial Treasurer.

Compensation of commissioners.

(3732) § **17.** Said commissioners shall receive as compensation for their services two dollars and fifty cents per day each, for the time actually and necessarily employed in the discharge of their duties which shall be paid by the Territorial Treasurer from the funds of such Normal School in his hands, on an account made out and sworn to, filed and approved by the Territorial Auditor.

Buildings occupied, when.

(3733) § **18.** When the buildings are so far completed as to be fit for use as a Normal School such commissioners sball permit the board of education to control and manage the same for use as a Normal School.

Commissioner's bond

(3734) § **19.** All commissioners appointed under the provisions of this act, shall give bond to the Territory of Oklahoma for the sum of three thousand dollars for the use and benefit of such Normal School, conditioned for the faithful performance of their duties, and the proper payment of all funds coming to their hands, said bond to be in form as designated by the Governor and with good and sufficient sureties to be approved by him.

Bonds shall issue, when.

(3735) § **20.** The bonds provided to be issued by Oklahoma county shall be issued only after the people of that county have so ordered at a general or special election. The people shall vote at such election for or against the issuance of such Normal School bonds, and if a majority of the vote be cast for the issuance of such bonds they they shall be issued, otherwise they shall not.

CHAPTER LVIII.—NOTARIES PUBLIC.

AN ACT providing for the office of notary public and defining the duties and powers of the same.

[Took effect December 25, 1890.]

SECTION.
1. Appointment.
2. Oath; bond; seal.
3. Blanks for bond and oath.
4. Commission, bond and oath filed.
5. Official acts, how authenticated; misdemeanor.
6. Notarial powers.
7. Protests for banks.
8. Official record, certified copy.
9. Vacancy.
10. Statute of limitation.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Appointment.

(3736) § **1.** The Governor shall appoint and commission in each county, as occasion may require, one or more notaries public who shall hold their offices for four years.

Oath; bond; seal.

(3737) § **2.** Every notary public before entering upon the duties of his office shall file with the county clerk of the county for which he was commissioned, his oath of office, and a good and sufficient bond to the Territory of Oklahoma, in the sum of one thousand dollars, with one or more sureties, to be approved by said clerk, conditioned for the faithful performance of the duties of his office, and he shall also file with said clerk and with the Secretary of the Territory his official signature and an impression of his official seal.

Blanks for bond and oath.

(3738) § **3.** Blanks for bonds and oath of office shall be furnished with the commission by the Secretary of the Territory.

Commission, bond and oath filed.

(3739) § **4.** Such commission, bond and oath shall be recorded in the office of the clerk of such county, and immediately thereafter said bond and oath shall be transmitted to the Secretary of the Territory and by him filed and recorded in his office. The said clerk and Secretary of the Territory shall each be entitled to a fee of one dollar for recording the papers in each case.

Official acts, how authenticated; misdemeanor.

(3740) § **5.** Every notary shall provide a notarial seal containing his name and place of residence, and he shall authenticate all his official acts, attestations and instruments therewith; and he shall add to his official signature the date of expiration of his commission as such notary public. If any notary public shall neglect or refuse to attach to his official signature the date of expiration of his commission as provided in this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding fifty dollars.

Notarial powers.

(3441) § **6.** Notaries public shall have authority to make the proof and acknowledgement of deeds and other instruments of writing required to be proved or acknowledged; to administer oaths; to demand acceptance or payment of foreign and inland bills of exchange and promissory notes, and protest the same for non-acceptance or non-payment, as the same may require, and to

exercise such other powers and duties as by law of nations and commercial usage may be performed by notaries public.

Protests for banks.

(3742) § **7**. In cases of protest for banks or banking corporations, notaries shall keep a register thereof in a book provided for that purpose by the bank or banking corporation, and the notary shall not be required to deliver such register to the county clerk. but shall leave the same in the possession of such bank or banking corporation.

Official record; certified copy.

(3743) § **8**. Every notary shall keep a fair record of his official acts, and if required, shall give a certified copy of any record in his office, upon the payment of the fees therefor.

Vacancy.

(3744) § **9**. If any notary die, resign, be disqualified or remove from the county, his record and official and public papers of his office, shall, within thirty days, be delivered to the clerk of the county.

Statute of limitation.

(3745) § **10**. No suit shall be instituted against any such notary or his securities more than three years after the cause of action accrues.

CHAPTER LIX.—OATHS.

AN ACT prescribing as to who are Authorized to Administer Oaths in the Territory of Oklahoma.

[Took effect December 9, 1890.]

SECTION.
1. Oath administered, who by.
SECTION.
2. Oath or affirmation.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Oath administered.

(3746) **1**. The following officers are authorized to administer oaths: Each Justice of the Supreme Court, clerk of the Supreme and district courts and their deputies within their respective counties, county clerks and their deputies and county commissioners within their respective counties, judges of the probate court, justices of the peace and notaries public within their respective counties. Each sheriff and his deputies in cases where they are authorized by law to select commissioners or appraisers, or to impanel juries for the view of appraisement of property, or are directed as an official duty to have property appraised, or take the answers of garnishees, or are authorized to take delivery bonds.

Oath or affirmation.

(3747) § **2**. Persons conscientiously opposed to swearing may affirm and shall be subject to the penalties of perjury as in case of swearing.

CHAPTER LX.—OBLIGATIONS.

ARTICLE.
1. Definition of obligation.
2. Interpretation of obligations.
3. Transfer of obligations.
4. Extinction of obligations.

ARTICLE 1.—DEFINITION OF OBLIGATIONS.

SECTION.
1. Obligation defined.
2. Origin and enforcement.

Obligation defined.

(3748) § **1.** An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

Origin and enforcement.

(3749) § **2.** An obligation arises either from:

First. The contract of the parties; or.

Second. The operation of law.

An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding.

ARTICLE 2.—INTERPRETATION OF OBLIGATIONS.

Joint or Several Obligations.

SECTION.
1. Classes of obligations.
2. Presumed joint, when.
3. Contribution.

Conditional Obligations.

SECTION.
4. Uncertain event.
5. Conditions classed.
6. Conditions precedent.
7. Condition concurrent.
8. Condition subsequent.
9. Equity requires equity.
10. Performance waived.
11. Unlawful conditions.
12. Forfeiture.

Alternative Obligations.

SECTION.
13. Selection of alternative obligations.
14. Right not used.
15. Alternative distinct.
16. Valid one prevails.

The rules which govern the interpretation of contracts are prescribed by chapter 17. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

Classes of obligations.

(3750) § **1.** An obligation imposed upon several persons, or a right created in favor of several persons, may be:

First. Joint.

Second. Several; or,

Third. Joint and several.

Presumed joint.

(3751) § **2.** An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint,

and not several, except in the special cases mentioned in the article on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

Contribution.

(3752) § **3.** A party to a joint, or joint and several obligation who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

Uncertain event.

(3753) § **4.** An obligation is conditional when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

Conditions classed.

(3754) § **5.** Conditions may be precedent, concurrent or subsequent.

Condition precedent.

(3755) § **6.** A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

Condition concurrent.

(3756) § **7.** Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

Condition subsequent.

(3757) § **8.** A condition subsequent is one referring to a future event, upon happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

Equity requires equity.

(3758) § **9.** Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent, so imposed upon him, on the like fulfillment by the other party; except as provided by the next section.

Performance waived.

(3759) § **10.** If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing, or offering to perform, any conditions upon his part, in favor of the former party.

Unlawful conditions.

(3760) § **11.** A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the chapter on contracts, or which is repugnant to the nature of the interest created by the contract, is void.

Forfeiture.

(3761) § **12.** A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

Selection of alternative obligations.

(3762) § **13.** If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

Not used passes to other party.

(3763) § **14.** If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

Alternatives distinct.

(3764) § **15.** The party having the right of selection between

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alternative acts, must select one of them in its entirety, and can not select part of one and part of another, without the consent of the other party.

Valid one prevails.

(3765) § **16.** If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful, or impossible of performance, the obligation is to be interpreted as though the other stood alone.

ARTICLE 3.—TRANSFER OF OBLIGATIONS.

SECTION.		SECTION.	
1.	Beneficiary's consent.	6.	If it benefits property.
2.	A right may be transferred.	7.	Covenants that run with the land.
3.	Non-negotiable written contract may be transferred.	8.	Limited to certain assigns.
4.	Covenants follow the land.	9.	Only follows whole estate.
5.	What so run with land.	10.	Liability only while holding.
		11.	Burdens apportioned.

Beneficiary's consent

(3766) § **1.** The burden of an obligation may be transferred, with the consent of the party entitled to its benefit, but not otherwise, except at provided by section 3777.

A right may be transferred

(3767) § **2.** A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

Non-negotiable written contract may be transferred

(3768) § **3.** A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

Covenants follow the land

(3769) § **4.** Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor, and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

What so run.

(3770) § **5.** The only covenants which run with the land are those specified in this chapter and those which are incidental thereto.

If it benefits property.

(3771) § **6.** Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existance, runs with the land.

Covenants that run with the land.

(3772) § **7.** The last section includes covenants of warranty, for quiet enjoyment, or for further assurance, on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.

Limited to certain assigns

(3773) § **8.** A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far only as the assigns thus mentioned are concerned.

(3774) § **9.** A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property. Only follows whole estate.

(3775) § **10.** No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for breach of the covenant before he acquired the estate, or after he has parted with it, or ceased to enjoy its benefits. Liability while holding, only.

(3776) § **11.** Where several persons, holding by several titles, are subject to the burden, or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity. Burden apportioned.

ARTICLE 4.—EXTINCTION OF OBLIGATIONS.

Performance.

SECTION.
1. Performance extinguishes obligation.
2. Performance by one for all.
3. Same to one for all.
4. Particular manner.
5. Partial performance.
6. Payment defined.
7. Performance, how applied.

Offer of Performance.

SECTION.
8. Complete performance.
9. Partial performance.
10. Must be by debtor.
11. Must be to creditor.
12. Place of performance.
13. Time of performance.
14. Time not specified.
15. Delay compensated.
16. Offer made in good faith.
17. Free from condition.
18. Ability must attend offer.
19. Production only if accepted.
20. Thing offered must be distinct.
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Performance extinguishes an obligation.

(3777) § **1.** Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

Performance by one person.

(3778) § **2.** Performance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all.

To one for all.

(3779) § **3.** An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the chapter on deposits.

Particular manner

(3780) § **4.** If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

Partial performance.

(3781) § **5.** A partial performance of an indivisable obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it, without injuring his own property, his retention thereof is not presumed to be voluntary.

Payment defined

(3782) § **6.** Performance of an obligation for the delivery of money only, is called payment.

Performance, how applied.

(3783) § **7.** Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

First. If, at the time of the performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

Second. If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor.

Third. If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

(*a*) Of interest due at the time of the performance.

(*b*) Of principal due at that time.

(*c*) Of the obligation earliest in date of maturity.

(*d*) Of an obligation not secured by a lien or collateral undertaking.

(*e*) Of an obligation secured by a lien or collateral undertaking.

Complete performance.

(3784) § **8.** An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

Partial performance.

(3785) § **9.** An offer of partial performance is of no effect.

Must be by debtor.

(3786) § **10.** An offer of performance must be made by the debtor or by some person on his behalf and with his assent.

Must be to creditor.

(3787) § **11.** An offer of performance must be made to the creditor, or to any one or two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and if not, wherever the creditor may be found.

Place of performance.

(3788) § **12.** In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

First. At any place appointed by the creditor; or,

Second. Wherever the person to whom the offer ought to be made, can be found; or,

Third. If such person cannot, with reasonable diligence, be found within this Territory, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence, or place of business, if the same can, with reasonable diligence, be found within the Territory; or,

Fourth. If this cannot be done, then at any place within this Territory.

Time of performance.

(3789) § **13.** Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

Time not specified.

(3790) § **14.** When an obligation does not fix a time for its performance, an offer of performance may be made at any time, before the debtor, upon a reasonable demand has refused to perform.

Delay compensated.

(3791) § **15.** Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other persons in the meantime.

Offer made in good faith

(3792) § **16.** An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

Free from condition.

(3793) § **17.** An offer of performance must be free from any conditions which the creditor is not bound on his part to perform.

Ability must attend offer

(3794) § **18.** An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

Production only if accepted.

(3795) § **19.** The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance, unless the offer is accepted.

Thing offered distinct.

(3796) § **20**. A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

Contingent offer.

(3797) § **21**. When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

Receipt obligatory.

(3798) § **22**. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

Deposit of tender.

(3799) § **23**. An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor with some bank of deposit within this Territory, of good repute, and notice thereof is given to the creditor.

Objections waived.

(3800) § **24**. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

Proffered title passes.

(3801) § **25**. The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

Deposit of thing offered,

(3802) § **26**. The person offering a thing, other than money, by way of performance must if he means to treat it as belonging to the creditor, retain it as a depositary for hire until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and if with reasonable diligence, he can find a suitable depositary therefor, until he has deposited it with such person.

Due offer stops interest.

(3803) § **27**. An offer of payment or other performance duly made though the title to the thing offered be not transferred to the creditor stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof.

Bailee of non-accepted offer.

(3804) § **28**. If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is gratuitous depositary thereof.

Excuses for non-performance of obligation.

(3805) § **29**. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate.

First. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse.

Second. When it is prevented or delayed by an irresistible superhuman cause, or by the act of public enemies of this Territory or of the United States, unless the parties have expressly agreed to the contrary; or,

Third. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect,

done at or before the time at which such performance or offer may be made, and not rescinded before that time.

Prevented by creditor.

(3806) § **30**. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

Ratable part of consideration.

(3807) § **31**. If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance according to the benefit which the creditor receives from the actual performance.

Refusal before offer.

(3808) § **32**. A refusal by a creditor to accept peformance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

Accord defined.

(3809) § **33**. An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

Obligation abides.

(3810) § **34**. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

Accord extinguishes obligation.

(3811) § **35**. Acceptance, by the creditor of the consideration of an accord, extinguishes the obligation, and is called satisfaction.

Part performance accepted.

(3812) § **36**. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

Novation defined.

(3813) § **37**. Novation is the substitution of a new obligation for an existing one.

Classes of substitution.

(3814) § **38**. Novation is made:

First. By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation.

Second. By the substitution of a new debtor in place of the old one, with intent to release the latter; or,

Third. By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

Under rules of contract.

(3815) § **39**. Novation is made by contract, and is subject to all the rules concerning contracts in general.

Rescinding acceptance.

(3816) § **40**. When the obligation of a third person on an order upon such person is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor; or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

Release extinguishes obligation.

(3817) § **41**. An obligation is extinguished by a release there-

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from given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

Only known claims released.

(3818) § **42**. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Joint debtors duties.

(3819) § **43**. A release of one or two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

CHAPTER LXI.—OFFICERS.

AN ACT in Relation to the Time when the Term of Various Elective Officers shall Commence; Vacancies, and Filling the same; Appointment of Deputies, and where Office is to be kept.

[Took effect December 25, 1890.]

SECTION.

1. Term of office, when to begin.
2. When officers to qualify.
3. Failure to qualify; vacancy; contest.
4. Re-election; bond.
5. Officers to deliver to successor
6. Vacancy, how caused.
7. How resignations may be made.
8. Causes for removal.
9 Who may make charge.
10. Officer may be suspended.
11. Judgment, county clerk to record.
12. Successor to receive books. papers, etc.
13. Vacancies, how filled.
14. Vacancy within thirty days of election.
15. Appointments to be in writing.
16. When to qualify.
17. Deputies; appointment in writing.
18. Oath of deputy.
19. Who may not be deputies
20. Place of office.
21. Violations.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Term of office when to begin.

(3820) § **1**. Except when otherwise specially provided, the regular term of office of all county, township and road district officers, when elected for a full term, shall commence on the first Monday of January next succeeding their election; but if the office to which any person is elected be vacant at the time of election, even if he were not elected to fill a vacancy, he shall forthwith qualify and enter upon the duties of his office.

When officers to qualify.

(3821) § **2**. Except where otherwise specially provided, all Territorial, district, county, township and road district officers shall qualify and enter upon the duties of their office on the first Monday of January succeeding their election or within ten days thereafter.

Failure to qualify, vacancy, contest.

(3822) § **3**. If any person elected to any office mentioned in the preceding section shall fail to qualify and enter upon the duties of such office within the time fixed by law such office shall be deemed vacant and shall be filled by appointment by the authority provided by law to fill such vacancy: *Provided, however*, That if there is a contest for such office, or if the person elected to such office is prevented or obstructed in any manner from entering upon the duties of such office the time prescribed in which he shall

qualify and enter upon the duties of his office shall not govern, and he shall be allowed twenty days after the day of such decision or the termination of such preventing or obstructing cause in which to qualify.

Re-election; bond.

(3823) § **4.** When the incumbent of any office is re-elected he shall qualify as above required; but his bond shall not be approved until he has produced or fully accounted for all public funds and property in his control under color of his office during the expiring term, to the person or authority to whom he should account, and the fact and date of such satisfactory exhibit shall be endorsed upon the new bond before its approval.

Officer to deliver to successor.

(3824) § **5.** Every officer elected or appointed under the laws of the Territory on going out of his office at the expiration of his term thereof, shall deliver to his successor in office all public moneys, books, records, accounts, papers and documents in his possession belonging or appertaining to such office.

Vacancy, how caused.

(3825) § **6.** Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office:

(*a*) The death of the incumbent; his resignation.

(*b*) His removal from office, failure to qualify as required by law.

(*c*) His ceasing to be a resident of the Territory, district, county, township, or road district in which the duties of his office are to be exercised or for which he may have been elected.

(*d*) His conviction of any infamous crime or for any offense involving a violation of his official oath.

(*e*) Whenever a judgment shall be obtained against him for a breach of his official bond.

How resignations may be made.

(3826) § **7.** Resignations may be made as follows:

First. Of all Territorial and district officers, to the Governor.

Second. Of all members of the Legislative Assembly, to the presiding officers of their branches respectively, when in session, and when not in session, to the Governor; and when made to the presiding officer he shall at once notify the Governor thereof.

Third. Of all the officers of the Legislative Assembly, to the respective branches thereof.

Fourth. Of all elective county officers, by filing or depositing such resignation in writing in the office of the county clerk, except that of county clerk, which shall be filed or deposited with the board of county commissioners, which resignations, unless a different time is fixed therein, shall take effect upon such filing or deposit.

Fifth. Of officers of municipal townships, to the board of county commissioners.

Sixth. Of all officers holding their offices by appointment, to the body, board, court or officer that appointed them.

Causes for removal.

(3827) § **8.** All elective, county, township and other officers may be charged, tried and removed from office for either of the causes following:

First. Habitual or wilful neglect of duty.

Second. Gross partiality.

Third. Oppression.
Fourth. Extortion.
Fifth. Corruption.
Sixth. Wilful maladministration in office.
Seventh. Habitual drunkenness.
Eighth. For a failure to produce and account for all public funds and property in his hands at any settlement or inspection authorized by law.

Who to make charge.

(3828) § **9**. The board of county commissioners in the name of the county or any person in his own name, make such a charge and bring the action, and the district court shall have exclusive criminal jurisdiction thereof. The proceedings shall be as provided in civil and criminal procedure.

Officer may be suspended.

(3829) § **10.** At any time after the commencement of the action, the court may suspend the accused from the functions of his office until the determination of the matter if sufficient cause appear from the testimony or affidavits then presented; and if such suspension take place, the board of county commissioner shall temporarily fill the office by appointment.

Judgment, county clerk to record.

(3830) § **11**. The question of fact shall be tried as in other actions, and if the accused is found guilty, the judgment shall be entered removing the officer from his office and declaring the latter vacant, or as provided for in the criminal procedure, and a copy thereof shall be certified to the board of county commissioners, and the county clerk shall enter the same upon the proper record.

Successor to receive books, papers, etc.

(3831) § **12**. Upon the death, resignation, suspension or removal from office of any officer, all books and papers belonging to his office and all moneys in his hands and all property of whatever kind held by him by virtue of his office, shall be delivered to his successor.

Vacancies, how filled.

(3832) § **13**. All vacancies, except where otherwise specifically provided, for, and except in the offices of the members of the Legislative Assembly, shall be filled by appointment, as follows:

First. In Territorial and county offices, by the Governor.

Second. In township offices by the board of county commissioners.

Vacancy within thirty days of election.

(3833) § **14**. If a vacancy occurs within thirty days previous to an election day at which it may be filled, no appointment shall be made unless it be necessary to carry out said election and the canvass of the same according to law; in that case an appointment may be made at any time previous to said election to hold until after said election or until his successor is elected and qualified.

Appointments to be in writing

(3834) § **15**. Appointments made under the provisions of this act shall be made in writing, and made to continue until the next general election at which the vacancy can be filled, and until a successor is elected and qualified, to be filed with the Secretary of the Territory or in the proper county offices respectively.

When to qualify.

(3835) § **16.** Persons appointed to offices as herein provided, shall qualify in the same manner as is required of those elected the time of which shall be prescribed in their appointments.

(3836) § **17**. The Territorial Auditor, Treasurer, and superintendent of public instruction, the county treasurer, sheriff, register of deeds, surveyor, clerk of the district court, may each appoint a deputy, for whose acts he shall be responsible; and each officer required to give bond may require a bond from his deputy in a penal sum not greater than half the penal sum of his own bond, and such bond may be retained by the officer for his own protection and the appointment must be in writing and shall be revocable in writing at the pleasure of the principal, and all such appointments and revocations shall be filed as and where required for the bond and oath of the principal.

Deputies, appointment in writing.

(3837) § **18**. Each deputy shall take and subscribe the same oath as his principal, (naming his deputyship), which shall be endorsed upon and filed with his certificate of appointment.

Oath of deputy.

(3838) § **19**. No territorial officer can appoint as his deputy any other territorial or any district officer, nor can a Territorial Treasurer appoint as his deputy any county treasurer, judge of the probate court, ragister of deeds, sheriff, or county commissioner, nor can either the clerk of the district court, the register of deeds or sheriff appoint as his deputy either of the others or their deputies.

Who may not be deputies.

(3839) § **20**. It shall be unlawful for any county, township or road district officer in this Territory to keep his office or keep any books, papers, records or other property belonging to said county, township or road district in said count (at any place) other than that in which he is required by the laws now in force to keep said office.

Place of office.

(3840) § **21**. Any county, township or road district officer violating the provisions of this act is guilty of misdemeanor.

Violations.

CHAPTER LXII.—PARTNERSHIP.

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2. Special partnerships.
3. General Partnerships.

ARTICLE 1.—PARTNERSHIP IN GENERAL.

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11. Good faith between partners,
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Renunciation of Partnership.

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Partnership defined.

(3841) § **1.** Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

Ship owners.

(3842) § **2.** Part owners of a ship do not, by simply using it in joint enterprise, become partners as to the ship.

Consent necessary to form partnership

(3843) § **3.** A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

Property of partnership consists of what.

(3844) § **4.** The property of a partnership consists of all that is contributed, to the common stock at the formation of the partnership, and of all that is subsequently acquired thereby,

Interest of each member extends to all property.

(3845) § **5.** The interest of each member of a partnership extends to every portion of its property.

Shares in profit and loss.

(3846) § **6.** In the absence of an agreement on the subject, the shares of partners in the profits or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

Implied division of loss.

(3847) § **7.** An agreement to divide the profits of a business

implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

Property applies to debts.

(3848) § **8.** Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose and for the payment of the general balance, if any, due to him.

Presumption as regards partnership property.

(3849) § **9.** Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

Partners are trustees for each other.

(3850) § **10.** The relations of partners are confidential. They are trustees for each other within the meaning of article 1, of the chapter on trusts. Their obligations as such trustees are defined by that chapter.

Good faith required between partners.

(3851) § **11.** In all proceedings connected with the information, conduct, dissolution and liquidation of the partnership, every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

Mutual liability.

(3852) § **12.** Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be idemnified thereby for all losses and risks which he necessarily incurs on its behalf.

No compensation.

(3853) § **13.** A partner is not entitled to any compensation for services rendered by him to the partnership.

Renunciation of profits exonerates partner

(3854) § **14.** A partner may exonerate himself from all future liability to a third person on account of the partnership, by renouncing in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership, and does not intend to be liable on account thereof for the future.

Effect of renunciation.

(3855) § **15.** After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

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Alteration and Dissolution.

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Special partnership is formed, how.

(3856) § **1.** A special or limited partnership may be formed by two or more persons in the manner and with the effect prescribed in this article, for the transaction of any business except banking or insurance.

Special partnership, how constituted.

(3857) § **2.** A special partnership may consist of one or more persons, called general partners, and one or more persons called special partners.

Certified statement of special partnership

(3858) § **3.** Persons desirous of forming a special partnership must severally sign a certificate, stating:

First. The name under which such partnership is to be conducted.

Second. The general nature of the business intended to be transacted.

Third. The names of all the partners, and their residences, specifying which are general and which are special partners.

Fourth. The amount of capital which each special partner has contributed to the common stock; and,

Fifth. The periods at which such partnership will begin and end.

Certificate must be acknowledged and filed.

(3859) § **4.** Certificates under the last section must be acknowledged by all the partners before some officer authorized to take acknowledgement of deeds, one to be filed in the office of

the clerk of the district court of the county or sub-division, and the other recorded in the office of the register of deeds of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the register of deeds, in whose office it is recorded, must be filed in the clerk's office as aforesaid, and recorded in like manner in the office of the register of deeds in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

Affidavit showing money paid in by special partners.

(3860) § **5.** An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid in the lawful money of the United States, must be filed in the same office with the original certificate.

Compliance required.

(3861) § **6.** No special partnership is formed until the provisions of the last five sections are complied with.

Certificate of special partnership must be published.

(3862) § **7.** The certificate mentioned in this article, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in the Territory nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing such certificate. In case the publication is not so made, the partnership must be deemed general.

Affidavit of publication must be filed.

(3863) § **8.** An affidavit of publication, pursuant to the preceding section, made by the printer, publisher or chief clerk of a newspaper, may be filed with the register of deeds with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

Renewal of special partnership.

(3864) § **9.** Every renewal or continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation.

Style of special partnership.

(3865) § **10.** The business of a special partnership must be conducted under a name, consisting of the names or surnames of one or more of the general partners only, with or without the addition of the words "and company." or "& Co," Such partnership shall put up in some conspiciuous place, on the outside and in front of the building in which it has its chief place of business, some sign on which shall be painted, in legible English characters, all the names of all the members of such partnership, designating the special partners.

Who transact business.

(3866) § **11.** The general partners only have authority to transact the business of a special partnership.

Special partner may investigate.

(3867) § **12.** A special partner may at all times investigate the partnership affairs, and advise his partners or their agents as to their management.

He may loan money to the firm.

(3868) § **13.** A special partner may lend money to the partnership, or advance money for it, and take from it security there-

for, and as to such loans or advances has the same rights as any other creditor; but, in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

Who may sue and be sued.

(3869) § **14.** In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

Withdrawal of capital.

(3870) § **15.** No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership during its continuance.

May draw profits.

(3871) § **16.** A special partner may receive such lawful interest, and such proportion of profits, as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

Special partner becomes general partner, how.

(3872) § **17.** If a special partner withdraws capital from the firm, contrary to the provisions of sections 3865 to 3873 inclusive, he thereby becomes a general partner.

Preferences, Void as against creditors.

(3873) § **18.** Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner, over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created or security given, in like manner and with like intent, is in like manner void.

Liability of general partners

(3874) § **19.** The general partners in a special partnership are liable to the same extent as partners in a general partnership.

Liability of special partners.

(3875) § **20.** The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

First. If he has wilfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable as a general partner to all the creditors of the firm.

Second. If he has wilfully interferred with the business of the firm, except as permitted in sections 3843 and 3848 inclusive, he is liable in like manner; or,

Third. If he has wilfully joined in or assented to an act contrary to any of the provisions of sections 3843 to 3848 inclusive he is liable in a like manner.

Same.

(3876) § **21.** When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner to any creditor of the firm who has been actually mislead thereby to his prejudice.

Questioning the existence of special partnership.

(3877) § **22.** One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the per-

sons thus named as general partners upon that contract, by reason of any error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by law.

Special partnership becomes general, when.

(3878) § **23.** A special partnership becomes general, if within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business, or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the clerk of the district court and the register of deeds, with whom the original certificate of the partnership was filed, and notice thereof published as is provided in sections from 3855 to 3863 inclusive.

New special partners admitted.

(3879) § **24.** New special partners may be admitted into a special partnership, upon a certificate, stating the names, residences and contributions to the common stock of each of such partners, signed by each of them and by the general partners, verified, acknowledged or proved, and filed with the clerk, and recorded in the register's office in which the original certificate was filed, according to the provisions of sections 3855 to 3863 inclusive.

Dissolution, notice of must be filed and published.

(3880) § **25.** A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners is complete until a notice thereof has been filed and recorded in the office of the register of deeds with whom the original certificate was recorded, and filed in the office of the clerk of the district court, and published once in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

ARTICLE 3.—GENERAL PARTNERSHIP.

What is a General Partnership.

SECTION.
1. General partnership defined.

Powers and Authority of Partners.

SECTION.
2. Majority governs.
3. Each partner is a general agent.
4. Authority of partners.
5. Bad faith does not bind partner.

Mutual Obligations of Partners.

SECTION.
6. Profits belong to the firm.
7. Adverse interests can not be had.
8. May engage in separate business.
9. Must account for profits.

Liability of Partners.

SECTION.
10 Liability to third person.
11. Liability for each other's acts.
12. Liability of one represented as partner.
13. Who is not liable.

Termination of Partnership.

SECTION.
14. Duration of partnership.
15. Causes of dissolution.
16. Partial dissolution.
17. Judgment of dissolution.
18. Notice of termination must be published.
19. Notice of change of partnership.

Liquidation.

SECTION.
20. Powers after dissolution.
21. Who may act in liquidation.
22. Who may not act.
23. Power of partner authorized to liquidate.
24. Same; indorsing papers; death of partner.

Of the Use of Fictitious Names.

SECTION.
25. Use of fictitious names; certificate of true names.
26. Foreign partnerships.
27. Certificate acknowledged.
28 New certificate with each change.
29. Firms and names of persons registered.
30. Copies of register on evidence.

General partnership defined.

(3881) § **1.** Every partnership that is not formed in accordance with the law concerning special partnership, and every special partnership, so far only as the general partners are concerned, is a general partnership.

Majority governs.

(3882) § **2.** Uuless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

Each partner a general agent.

(3883) § **3.** Every general partner is agent for the partner-

ship in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement in writing.

Limitations on authority of partners.

(3884) § **4.** A partner, as such, has not authority to do any of the following acts, unless his co-partners have wholly abandoned the business to him, or are incapable of acting.

First. To make an assignment of the partnership property, or any portion thereof, to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors.

Second. To dispose of the good will of the business.

Third. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise.

Fourth. To do any act which would make it impossible to carry on the ordinary business of the partnership.

Fifth. To confess a judgment.

Sixth. To submit a partnership claim to arbitration; or,

Seventh. To do any other act not within the scope of the preceding section.

Bad faith does not bind partners.

(3885) § **5.** A partner is not bound by any act of a co-partner in bad faith toward him, though within the scope of a partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

Profits belong to firm

(3886) § **6.** All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

Partners cannot have adverse interest.

(3887) § **7.** A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it.

But may engage in separate business.

(3888) § **8.** A partner may engage in any separate business, except as otherwise provided by the last two sections.

General partner must account for profits.

(3889) § **9.** A general partner, transacting business contrary to the provisions of this article, may be required by any copartner to account to the partnership for the profits of such business.

Liability to third persons

(3890) § **10.** Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners.

Liability for each other's acts.

(3891) § **11.** The liability of general partners for each other's acts is defined by the chapter on agents and agencies.

Liability of one represented as a partner.

(3892) § **12.** Any one permitting himself to be represented as a partner, general or special, is liable as such to third persons to whom such representation is communicated, who on the faith thereof gives credit fo the partnership.

Who not liable.

(3893) § **13.** No one is liable as a partner who is not such in fact, except as provided by the last section.

Duration of partnership.

(3894) § **14.** If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

Causes of dissolution of partnership.

(3895) § **15.** A general partnership is dissolved as to all the partners:

First. By lapse of the time prescribed by agreement for its duration.

Second. By the expressed will of any partner, if there is no such agreement.

Third. By the death of a partner.

Fourth. By the transfer, to a person not a partner, of the interest of any partner in the partnership property.

Fifth. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,

Sixth. By a judgment of dissolution.

Partial dissolution.

(3896) § **16**. A general partnership may be dissolved as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his co-partners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

Judgment of dissolution.

(3897) § **17**. A general partner is entitled to a judgment of dissolution.

First. When he or another partner becomes legally incapable of contracting.

Second. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,

Third. When the business of the partnership can be carried on only at a permanent loss.

Notice of termination of partnership must be published.

(3898) § **18**. The liability of a general partner for the acts of his co-partners continues, even after a dissolution of the partnership, in favor of persons who have had dealings with, and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons, until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business; to the extent, in either case, to which such persons part with value, in good faith, and in the belief that such partner is still a member of the firm.

Notice of change of partnership.

(3899) § **19**. A change of the partnership name, which plainly indicates the withdrawal of a partner, is a sufficient notice of the fact of such withdrawal to all persons to whom it is communicated. But a change in the name which does not contain such an indication is not notice of the withdrawal of any partner.

Powers after dissolution.

(3900) § **20**. After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article.

Who may act in liquidation.

(3901) § **21**. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

Who may not act.

(3902) § **22**. If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of

persons parting with value, in good faith, upon the credit thereof.

Power of partner authorized to liquidate.

(3903) § **23.** A partner authorized to act in liquidation may collect, compromise or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property.

Same, indorse papers, death of a partner.

(3904) § **24.** A partner authorized to act in liquidation, may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm, by an acknowledgment, when an action thereon is barred under the provisions of civil procedure. On the death of a partner, the surviving partners succeed to all the partnership property, whether real or personal, in trust for the purpose of liquidation, even though the deceased was appointed by agreement sole liquidator; and the interest of the deceased in the ultimate distribution of the partnership assets passes to those who succeed to his other personal property.

Use of fictitious names; certificate of true names.

(3905) § **25.** Except as otherwise provided in the next section, every partnership transacting business in this Territory under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the distrct court of the county or sub-division in which its principal place of business is stated, a certificate, stating the names in full of all the members of such partnership, and their places of residence, and publish the same once a week for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county.

Foreign partnership.

(3906) § **26.** A commercial or banking partnership, established and transacting business in a place without the United States, may, without filing the certificate or making the publication prescribed in the last section, use in this Territory the partnership name used by it there, although it be fictitious, or do not show the names of the persons interested as partners in such business.

Certificate must be acknowledged.

(3907) § **27.** The certificate filed with the clerk of the district court, provided in section 3905 must be signed by the partners and acknowledged before some officer authorized to take acknowledgments of conveyances of real property. Persons doing business as partners, contrary to the provisions of this article, shall not maintain any action on or on account of any contracts made or transactions had in their partnership name in any court of this Territory until they have first filed the certificate and made the publication herein required: *Provided, however,* That if such partners shall at any time comply with the provisions of this article, then such partnership shall have the right to maintain an action in all such partnership contracts and transactions entered into prior as well as after such compliance with this article, and the disabilities heretofore imposed on partnerships by said article, for a failure to comply therewith, are hereby removed and made to conform to this section.

New certificate must be used with every change.

(3908) § **28.** On every change in the members of a partner-

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ship transacting business in this Territory under a fictitious name, or designation which does not show the names of the persons interested as partners in the business, except in the cases mentioned in section 3906, a new certificate must be filed with the clerk of the district court, and a new publication made as required by this article on the formation of such partnership.

Firms and names of persons must be registered.

(3909) § **29.** Every clerk of the district court must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this article, entering in alphabetical order the name of every such partnership and of each partner therein.

Copies of register are evidence.

(3910) § **30.** Copies of the entries of a clerk of the district court as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

CHAPTER LXIII.—PARENT AND CHILD.

ARTICLE.
1. Children by birth.
2. Adoption.
3. Guardian and ward.

ARTICLE 1.—CHILDREN BY BIRTH.

SECTION.
1. Legitimacy presumed.
2. Children born after dissolution of marriage or before wedlock.
3. Disputed legitimacy.
4. Both parents to support children.
5. Custody of legitimate child.
6. Custody of illegitimate children.
7. Allowance out of property of child.
8. Permit no control over property of child.
9. Abuse of parental authority.
10. Parents' power ceases, when.
11. Public action for support of child.
12. Support of poor.
13. Bequest to provide for child.
14. Parent not liable, when.
15. Support of step children.
16. Support after majority.
17. Child's earnings.
18. Wages of minor.
19. Change of residence of child.
20. No liability prevails.
21. Custody by father and mother.

Legitimacy presumed.

(3911) § **1.** All children born in wedlock are presumed to be legitimate.

Children born after dissolution of marriage or before wedlock.

(3912) § **2.** All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage. A child born before wedlock becomes legitimate by the subsequent marriage of its parent.

Disputed legitimacy.

(3913) § **3.** The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

Both parents to support children.

(3914) § **4.** The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

Custody of legitimate child is in the father.

(3915) § **5**. The father of a legitimate unmarried minor child is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto.

Illegitimate child.

(3916) § **6**. The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings.

Allowance out of property of child.

(3917) § **7**. The district court may direct an allowance to be made to a parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

Parent no control over property of child.

(3918) § **8**. The parent, as such, has no control over the property of the child.

Abuse of parental authority.

(3919) § **9**. The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by its relative within the third degree, or by the officers of the poor where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

Parent's power ceases, when

(3920) § **10**. The authority of a parent ceases:

First. Upon the appointment by a court of a guardian of the person of the child.

Second. Upon the marriage of the child; or,

Third. Upon its attaining majority.

Public action for support of child.

(3921) § **11**. If a parent chargeable with the support of a child dies, leaving it chargeable upon the township or county, and leaving an estate sufficient for its support, the officers of the poor, in the name of the township or county respectively, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs devisees, and next of kin to the parent.

Support of poor.

(3922) § **12**. It is the duty of the father, the mother, and the children, of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

Neglect to provide for child

(3923) § **13**. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent.

Parent not liable, when.

(3924) § **14**. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

Support of step-children.

(3925) § **15**. A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a par-

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ent, and where such is the case, they are not liable to him for their support, nor he to them for their services.

After majority.

(3926) § **16.** Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor.

Child's earnings.

(3927) § **17.** The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

Wages of a minor.

(3928) § **18.** The wages of a minor employed in service may be paid to him or her until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

Change residence of child.

(3929) § **19.** A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.

No liability.

(3930) § **20.** Neither parent or child is answerable, as such, for the act of the other.

Custody by father and mother.

(3931) § **21.** The husband and wife [father], as such, have [has] no rights superior to those of the wife and mother, in regard to the care, custody, education and control of the children of the marriage, while such husband and wife live separate and apart from each other; and when they so live in a state of separation without being divorced, the district court or judges thereof, upon application of either, may grant a wait of *habeas corpus* to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules prescribed in section 3951.

ARTICLE 2.—ADOPTION.

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1. Adoption of minor child.
2. Person adopting must be ten years older.
3. Mutual consent of husband and wife necessary.
4. Consent of parent of child.
5. Consent of child.
6. Approval of judge of probate.

SECTION.
7. Judge must examine persons separately.
8. Changing name of child.
9. Parents of child relieved of responsibility.
10. Adoption of illegitimate child by the father.

Adoption of minor child.

(3932) § **1.** Anv minor child may be adopted by any adult person, in the cases, and subject to the rules prescribed in this article.

Person adopting must be ten years older.

(3933) § **2.** The person adopting a child must be at least ten years older than the person adopted.

Mutual consent of husband and wife necessary.

(3934) § **3.** A married man not lawfully separated from his wife, cannot adopt a child wifhout the consent of his wife, nor can a married woman not thus separated from her husband, without his consent, provided the husband or wife not consenting, is capable of giving such consent.

Consent of Parent.

(3935) § **4.** A legitimate child cannot be adopted without the

consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights or adjudged guilty of adultery, or of cruelty, and for either cause divorced or adjudged to be an habitual drunkard, or who has been judiciously deprived of the custody of the child, on account of cruelty or neglect.

Consent of child.

(3936) § **5.** The consent of a child, if over the age of twelve years, is necessary to its adoption.

Approval of judge of probate.

(3937) § **6.** The person adopting a child, and the child adopted and the other persons whose consent is necessary, must appear before the probate judge of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated.

Judge must examine persons separately.

(3938) § **7.** The probate judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he mnst make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

Changing name of child.

(3939) § **8.** A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.

Parents of child. relieved of responsibility.

(3940) § **9.** The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and of all responsibility for, the child so adopted, and have no right over it.

Adoption of illegitimate child by father

(3941) § **10.** The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such, and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this article do not apply to such an adoption.

ARTICLE 3.—GUARDIAN AND WARD.

SECTION.
1 Guardian defined.
2 Ward defined,
3 Guardians classed.
4. General guardian.
5 Special guardian.
6 Guardian appointed, how.
7 Guardian must be appointed.
8. Probate court has power to appoint.
9 Guardian of non-resident.
10 Court controls guardian.
11, Rules to be observed in appointing guardian.
12 Preference as between two equally entitled.

SECTION.
13. Power of guardian.
14. Power of guardian of the person.
15. Power of guardian of the property.
16. Relation of guardian and ward.
17. Court control.
18. Joint guardians.
19. Guardians may be removed.
20. Power of guardian appointed by parent superceded.
21. Court guardian.
22. Majority of the ward.
23. Limitation of discharge.
24. Person of unsound mind placed in asylum, how.

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Guardian defined.

(3942) § **1.** A guardian is a person appointed to take care of the person or property of another.

Ward defined.

(3943) § **2.** The person over whom, or over whose property, a guardian is appointed, is called his ward.

Guardians classed.

(3944) § **3.** Guardians are either:

First. General; or,

Second. Special.

General guardian.

(3945) § **4.** A general guardian is a guardian of the person, or of all the property of the ward within this Territory, or of both.

Special guardian.

(3946) § **5.** Every other is a special guardian.

Guardian appointed, how.

(3947) § **6.** A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

First. If the child be legitimate, by the father, with the written consent of the mother, or by either parent, if the other be dead or incapable of consent.

Second. If the child be illegitimate, by the mother.

Guardian must be appointed.

(3948) § **7.** No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

Probate court has power to appoint.

(3949) § **8.** A guardian of the person or property, or both, of a person residing in this Territory, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in section 3947, by the probate court, as provided in chapter 19.

Guardian of non-resident.

(3950) § **9.** A guardian of the property, within this Territory, of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the probate court.

Court controls guardian.

(3951) § **10.** In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

Rules to be observed in appointing guardian.

(3952) § **11.** In awarding the custody of a minor, or in appointing a general guardian, the court or judge is to be guided by the following considerations:

First. By what appears to be for the best interests of the child in respects to its temporal and its mental and moral welfare; and if the child be of sufficient age to form an intelligent preference, the court or judge may consider that preference in determining the question.

Second. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right, but, other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

Preferences as between two equally entitled.

(3953) § **12.** Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

First. To a parent.

Second. To one who was indicated by the wishes of a deceased parent.

Third. To one who already stands in the position of a trustee of a fund to be applied to the child's support.

Fourth. To a relative.

(3954) § **13**. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered. Power of guardian.

(3955) § **14**. A guardian of the perron is charged with the custody of the ward, and must look to his support, health and education. He may fix the residence of the ward at any place within the Territory, but not elsewhere, without permission of the court. Power of guardian of the persons.

(3956) § **15**. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the probate court, but must so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward at the close of his guardianship, in as good condition as he received it. Power of guardian of the property.

(3957) § **16**. The relation of guardian and ward is confidential, and is subject to the provisions of the chapter on trusts. Relation of guardian and ward.

(3958) § **17**. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court. Court control.

(3959) § **18**. On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court. Joint guardians

(3960) § **19**. A guardian may be removed by the probate court for any of the following causes: Guardians may be removed, causes.

First. For abuse of his trust.

Second. For continued failure to perform its duties.

Third. For incapacity to perform its duties.

Fourth. For gross immorality.

Fifth. For having an interest adverse to the faithful performance of his duties,

Sixth. For removal from the Territory.

Seventh. In the case of guardian of the property, for insolvency.

Eighth. When it is no longer proper that the ward should be under guardianship.

(3961) § **20**. The power of a guardian appointed by a parent is superseded: Power of guardian appointed by parent is superseded

First. By his removal, as provided in section 3960.

Second. By the solemnized marriage of the ward.

Third. By the ward's attaining majority.

(3962) § **21**. The power of a guardian appointed by court is suspended only: Court guardians

First. By order of the court.

Second. If the appointment was made solely because of the ward's minority, by his obtaining majority.

Third. The guardianship over the person of the ward by the marriage of the ward.

(3963) § **22**. After a ward has come to his majority, he may settle accounts with his guardian and give him a release, which is valid if obtained fairly and without undue influence. Majority of the ward

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Limitation of discharge.

(3964) § **23.** A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

Asylum for people of unsound mind.

(3965) § **24.** A person of unsound mind may be placed in an asylum for such persons upon the order of the probate court of the county in which he resides, as follows:

First. The court must be satisfied, by the oath of two reputable physicians, that such person is of unsound mind, and unfit to be at large.

Second. Before granting the order the judge must examine the person himself, or if that is impracticable, cause him to be examined by an impartial person, duly sworn for that purpose.

Third. After the order is granted the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, may appeal to the district court and demand therein an investigation before a jury, which must be substantially, in all respects, conducted as under an inquisition of lunacy.

CHAPTER LXIV.—PERSONS.

SECTION.
1. Minority defined.
2. Adults defined.
3. Unborn child.
4. Persons of unsound mind.
5. Custody of minors.
6. Disability of minors.
7. Minor may make certain contracts.
8. Minors' contracts may be disaffirmed.
9. Cannot disaffirm contract for necessaries.
10. Statutory contracts.
11. Powers of idiots.
12. Rescission of contract made by person of unsound mind.
13. Incapacity determined.
14. Wrongs done by minor or persons of unsound mind.
15. Minor or persons of unsound mind not liable for exemplary damages.
16. Rights of action.
17. Rights and disabilities of guardians.
18 General rights of persons.
19. Defamation of character.
20. Definition of libel.
21. Definition of slander.
22. Privileged communications.
23. Offenses against personal relation.
24 Force may be used to protect.

Minority defined.

(3966) § **1.** Minors are:

First. Males under twenty-one years of age.

Second. Females nnder eighteen years of age.

The periods thus specified must be calculated from the first minute of the day on which persons are born, to the same minute of the corresponding day completing the period of minority.

Adults defined.

(3967) § **2.** All other persons are adults.

Unborn child

(3968) § **3.** A child conceived, but not born, is to be deemed an existing person so far as may be necessary for its interests in the event of its subsequent birth.

Persons of unsound mind.

(3969) § **4.** Persons of unsound mind within the meaning of this chapter are idiots, lunatics and imbeciles.

Custody oi minors.

(3970) § **5.** The custody of minors is regulated by the chapter on parent and child.

Disability of minors.

(3971) § **6.** A minor cannot give a delegation of power, nor under the age of eighteen, make a contract relating to real property, or any interests therein, or relating to any personal property not in his immediate possession or control.

Minor may make certain contracts.

(3972) § **7.** A minor may make any other contract than as above specified in the same manner as an adult, subject only to

his power of disaffirmance under the provisions of this chapter and subject to the provisions of the law on marriage, and on master and servant.

Minor's contracts may be disaffirmed.

(3973) § **8.** In all cases other than those specified in sections 3974 and 3975, the contract of a minor, if made whilst he is under the age of eighteen may be disaffirmed by the minor himself, either before his majority or within one years time afterwards; or in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received or paying its equivalent with interest.

Cannot disaffirm contract for necessaries

(3974) § **9.** A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family; entered into by him when not under the care of a parent or guardian able to provide for him or them.

Statutory contract.

(3975) § **10.** A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

Powers of idiots.

(3976) § **11.** A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary to his support or the support of his family.

Rescission of contract made by person of unsound mind.

(3977) § **12.** A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescision as provided in sections from 891 to 895 inclusive.

Incapacity determined

(3978) § **13.** After his incapacity has been judicially determined. a person of unsound mind can make no conveyance or other contract, nor designate any power, nor waive any right, until his restoration to capacity is judicially determined. But if actually restored to capacity, he may make a will, though his restoration is not thus determined.

Wrongs done by minor or person of unsound mind.

(3979) § **14.** A minor, or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, in like manner as any othe person,

Minor or person of unsound mind not liable for exemplary damages.

(3980) § **15.** A minor or person of unsound mind, cannot be subjected to exemplary damages, unless at the time of the act he was capable of knowing that it was wrongful.

Rights of action

(3981) § **16.** A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must be appointed to conduct the same.

Rights of Indians, disabilities

(3982) § **17.** Indians resident within this Territory have the same rights and duties as other persons, except that:

First. They cannot vote or hold office

Second. They cannot grant, lease or incumber Indian lands, except in the cases provided by special laws.

General rights of persons

(3983) § **18.** Besides the personal rights mentioned or recognized under the law, every person has, subject to the qualifications and restrictions provided by law, the right of protection

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from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

Defamation of character by libel or slander.

(3984) § **19.** Defamation is effected by:

First. Libel; or,

Second. Slander.

Definition of libel.

(3985) § **20.** Libel is a false and unprivileged publication by writing, printing, picture, effigy or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

Definition of slander.

(3986) § **21.** Slander is a false and unprivileged publication, other than libel, which:

First. Charges any person with crime, or with having been indicted, convicted or punished for crime.

Second. Imputes in him the present existence of an infectious, contagious or loathsome disease.

Third. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires. or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profit.

Fourth. Imputes to him impotence or want of chastity; or,

Fifth. Which, by natural consequence, causes actual damage.

Privileged communications.

(3987) § **22.** A privileged communication is one made:

First. In the proper discharge of an official duty.

Second. In any legislative or judicial proceeding, or in any other official proceeding authorized by law.

Third. In a communication,without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.

Fourth. By a fair and true report, without malice, of a judicial, legislative or other public official proceeding, or of anything said in the course thereof.

Fifth. In the cases provided for in sub-divisions 3 and 4 of this section. Malice is not inferred from the communication or publication.

Personal relation, offenses against.

(3988) § **23.** The rights of personal relation forbid:

First. The abduction of a husband from his wife or of a parent from his child.

Second. The abduction or enticement of a wife from her husband, of a child from a parent, or from a guardian entitled to its custody, or of a servant from his master.

Third. The seduction of a wife, daughter, orphan sister or servant; and,

Fourth. An injury to a servant which affects his liability to serve his master.

Force may be used to protect.

(3989) § **24.** Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a

CHAPTER LXV.—PHARMACY.

AN ACT to Regulate the Practice of Pharmacy in the Territory of Oklahoma and Providing Penalties for the Violation of the same.

[Took effect December 25. 1890.]

SECTION.
1. Who may compound medicine.
2. Examination; age.
3 Graduates in pharmacy.
4. Assistants; age; experience; examination.
5. Board of pharmacy, how appointed; term of office; vacancies; powers of board.
6. Meetings of board.
7. Compensation of board
8. Secretary's duties.
9. Fee for examination.
10. Graduates to register; fee.
11. Persons engaged in business three years.
12. Where certificate shall be placed.
13. Penalty for violation.
14. Fraudulent registration, penalty.
15. Temporary certificates.
16. Charge to grand jury.
17. Change of place of business.
18. Who not prohibited.
19. Habitual use of intoxicants.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

(3990) § **1**. That it shall unlawful for any person, unless a qualified pharmacist within the meaning of this act, to open or conduct any pharmacy, or for any one not a qualified pharmacist to prepare physicians's prescriptions or compound medicines except under direct supervision of a qualified pharmacist, as hereinafter provided. Who may compound medicine.

(5991) § **2**. Any person in order to be qualified shall be eighteen years old, and shall have passed a satisfactory examination before the board of pharmacy of Oklahoma Territory, or shall be a graduate in pharmacy as hereinafter provided. Examination, age.

(3992) § **3**. Graduates in pharmacy within the meaning of this act, shall be such as have obtained a diploma from a recognized college of pharmacy. Graduates.

(3393) § **4**. Assistants in pharmacy must be eighteen years old, and have had two years experience in stores where prescriptions of medical practitioners have been prepared and shall have passed a satitfactory examination before the board of pharmacy of Oklahoma Territory. Assistants, age; experience; examination.

(3994) § **5**. Within thirty days after approval of this act, the Governor shall appoint a board of pharmaceutical examiners, who shall hold their office for one, two and three years, which appointments shall be in writing, and signed by the Governor and Secretary of the Territory, and delivered to the person appointed. Said board of pharmacy shall be composed of three qualified pharmacists, who are residents of the Territory, no two of whom shall be residents of tbe same county, and who shall be graduates of pharmacy; which three are to be elected from one hundred names recommended by the Oklahoma Pharmaceutical Association. One shall be appointed for one year, one for two years and one Board of pharmacy, how appointed; term of office; vacancies; powers of board.

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for three years. If a vacancy occur in said board another shall be appointed as aforesaid to fill the unexpired term. At the expiration of each member's term of office, the Governor shall appoint his successon, who shall hold his office for three years. Said board shall have power to make by-laws and all necessary regulations, consistent with the provisions of this act, for the proper fulfillment of their duties; *Provided, however*, That in creating the first board under this act, the Governor may appoint as one or more members of said board, persons who are reputable and regularly practising physicians having diplomas from some duly recognized college of medicine, and without any recommendations from the Oklahoma Pharmaceutical Association.

Meetings of board.

(3995) § **6.** The board shall meet within sixty days after the passage of this act, and once a year thereafter in as central portion of the Territory as practicable, and shall give one month's notice through the public press, of the time and place of such meeting. The board shall organize by electing a president, treasurer and secretary. The duties of said board shall be to examine all applicants for registration and to direct the registration by the secretary, of all persons properly qualified or entitled, thereto.

Compensation of board.

(3996) § **7.** The members of the board of pharmacy shall receive as compensation for their services, five dollars a day and necessary expenses for each day actually employed at meetings of said board, to be paid out of the Territorial treasury: *Provided*, Such compensation and expenses shall at each meeting of the board not exceed the amount received by said board for examinations and certificates at such meeting.

Secretary's duties

(3997) § **8.** The duties of the secretary of pharmacy shall be to keep a book in which shall he entered under the supervision of the board of pharmacy, the name and place of business of every person who shall apply for registration, and a statement signed by the person making the application of such facts in the case as he may claim to justify his or her application. It shall also be the duty of the secretary to duly note the fact against the name of any qualified pharmacist who may have died, or removed from the Territory or disposed of or relinquished his business; a copy of which book, corrected quarterly, shall, by the secretary of such board, be placed on file in the office of the Secretary of the Territory, and certified copies of the record so filed, certified by the Secretary of the Territory, shall be evidence in all criminal prosecutions under this act and of equal force with the original.

Fee for examination.

(3998) § **9.** Any person in order to become a qualified pharmacist within the meaning of this act, shall apply and appear for examination and registration, and shall pay to the board of pharmacy five dollars, which shall be turned into the Territorial treasury, and on passing the examination required, shall be furnished free of cost a certificate of registration, signed by said board. Should said person fail to pass a satisfactory examination, he may at any other one meeting of the board of pharmacy within twelve months, be permitted to be examined without cost.

Graduates to register; fee.

(3999) § **10.** Graduates as specified in section three, shall ap-

ply for registration, and if they produce satisfactory evidence to the board of pharmacy that they have a right to be registered, shall upon paying the said board three dollars, be furnished a certificate of registration without examination.

Persons engaged in business three years.

(4000) § **11**. Any proprietor who has been actively engaged in the preparation of physicians' prescriptions and compounding and vending medicines for three years, prior to the passage of this act, upon a satisfactory evidence of the same and on proof that he is otherwise competent, shall be entitled to his certificate on payment of fees; also assistants who are likewise engaged and have been so engaged for three years and are eighteen years old: *Provided*, He or she or they will register as specified in this act at any meeting of the board of pharmacy, and upon paying the board three dollars shall be furnished with a certificate of registration: *Provided*, That the provisions of this bill shall not prevent any person from engaging in the business herein described, as proprietor or owner thereof provided such proprietor or owner shall have employed in his business some registered pharmacist to fill prescriptions and compound drugs.

Where certificate shall be placed.

(4001) § **12**. Any person receiving a certificate of registration shall place it in a conspicuous place in his place of business; failing to do this, the board of pharmacy shall cancel his registration and deprive him of his certificate.

Penalty for violation.

(4002) § **13**. Any person who continues to propound prescriptions or retail medicines without complying with this act, shall upon conviction thereof be sentenced to pay a fine of not less than fifty dollars nor more than one hundred dollars, and upon the second and every subsequent conviction, shall be sentenced to a fine of not less than one hundred dollars nor more than two hundred dollars and imprisonment for ninety days in [the] county jail.

Fraudulent registration, penalty.

(4003) § **14**. Any person who shall procure registration for himself or for another under this act by making or causing to be made any false representation shall be guilty of a misdemeanor and shall be fined not less than twenty-five nor more than one hundred dollars, and the name of the person so fraudulently registered shall be stricken from the register.

Temporary certificates.

(4004) § **15**. The secretary of the board of pharmacy may issue temporary certificates upon satisfactory proof that the applicant is competent, but said temporary certificate shall be null and void after the first regular or extra meeting of the board next after granting said temporary certificate: *Provided, further*, That not more than one temporary certificate, except for good cause shown to the board, shall ever be granted to any person.

Charge to grand jury.

(4005) § **16**. All courts having jurisdiction in criminal causes are required to give this act in charge to each grand jury impanelled in such courts.

Change of place of business.

(4006) § **17**. It shall be the duty of every registered pharmacist or assistant pharmacist, upon changing his place of business, from one town to another, forthwith to notify by letter the secretary of the board of pharmacy of such change, and to enclose a fee of fifty cents, upon receipt of which the secretary shall make

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the necessary alteration on his register. It shall also be the duty of every registered pharmacist, or assistant pharmacist, to notify by letter said secretary on the first day of July in each year, whether he still continues practicing pharmacy at registered place of business. The secretary shall notify every person who shall not have notified the board as herein provided, and in case an answer enclosing a fee of fifty cents shall not be received by the secretary within thirty days, such name shall be stricken from the register: *Provided, always*, That his name may be restored to register on the payment to the secretary within one year, of a fee of five dollars. It shall be the duty of the secretary of the board, to erase from the register, the name of registered pharmacists who may have died, removed from or ceased to do business in this Territory, and to make all the necessary alterations in the locations of the persons registered under this act, he shall publish annually a list of all persons that are registered as pharmacist and assistant pharmacist, a copy of which shall be mailed free to each and every registered pharmacist and assistant pharmacist in the Territory.

Who not prohibited.

(4007) § **18**. Nothing in this act shall be construed to apply to any practitioner of medicine who is licensed and qualified under the laws of this Territory nor so construed as to prevent any person or persons from investing their means in a drug store or stores: *Provided*, They keep employed qualified pharmacist for the direct supervision of vending and compounding medicines; nor shall this act be construed to prevent persons other than registered pharmacists from selling prepared medicines commonly known as patent medicines, common oils and well known medicines not active poisons that are sold without being mixed or compounded with others.

Habitual use of intoxicants

(4008) § **19**. No one who habitually uses intoxicating liquors as a beverage shall be appointed on the board of pharmacy nor be licensed as a pharmacist or assistant pharmacist. The examining board shall in all cases require each applicant to file his written declaration duly sworn to to the effect that he does not habitually use vinous, malt or alcoholic liquors as a beverage, and that he has not since January first, 1891, been engaged in the business of selling liquors in the Territory of Oklahoma. If said affidavit be filed after January first, 1893, the applicant shall then swear that he has not been engaged in the business of selling intoxicating liquors in the Territory of Oklahoma within the two year last past, and that he does not use intoxicants as before stated. Anyone swearing falsely, in the affidavit so filed, shall be guilty of perjury.

CHAPTER LXVI.—POOR.

AN ACT in relation to the settlement and support of the poor.

[Took effect December 24, 1890.]

SECTION
1. County commissioners to be over-seers of poor.
2. Suits against overseers.
3. County to support poor.
4. Legal settlement how acquired.
5. Duties of overseers.
6. Counties having no poor house.
7. Annual allowance.
8. Duties of overseers when complaint is made.
9 Overseers to keep poor book.
10. Poor person may apply to district court.
SECTION.
11. How to proceed when legal settlement is not known.
12. Temporary relief
13. Justice may issue warrant.
14. Overseers may appeal.
15. When appeal to be heard.
16. May amend order.
17. Overseers to receive poor.
18. Overseers return, amount how paid.
19. Compensation of overseers.
20. Accounts of overseers must be sworn to.
21. Sickness or death.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

County commissioners to be overseers of poor.

(4009) § **1.** The county commissioners of the several counties of this Territory shall be the over-seers of the poor within their several counties and shall perform all duties with reference to the poor within their respective counties that may be prescribed by law. Every board of county commissioners shall in discharging the duties imposed by this act, be designated as over-seers of the poor.

Suits against overseers.

(4010) § **2.** In all suits or proceedings in favor of or against any such over-seers of the poor, pertaining to or connected with the poor of their respective counties, the same shall be conducted in favor of or against such county in its corporate name.

County to support poor.

(4011) § **3.** Every county shall relieve and support all poor and indigent persons lawfully settled therein whenever they shall stand in need thereof, and the board of county commissioners may raise money for the support and employment of the poor in the same way and manner as in section eighteen provided.

Legal settlement, how acquired.

(4012) § **4.** Legal settlement may be acquired in any county so as to oblige such county to relieve and support the persons acquiring such settlement, in case they are poor and stand in need of relief, as follows:

First. A married woman shall always follow and have settlement of her husband if he have any within the Territory, otherwise her own at the time of her marriage, and if she then have any settlement it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it in the place where his wife shall have the settlement.

Second. Legitimate children shall follow and have the settlement of their father if he have any within the Territory, until they shall gain a settlement of their own, but if the father have no settlement, they shall in like manner follow and have the settlement of their mother if she have any.

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Third. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then have any within this Territory; but neither legitimate or illegitimate children shall gain a settlement by birth in the place where they were born, unless their parent or parents had a settlement therein at the time.

Fourth. Every male person and every unmarried female over the age of twenty-one years, who shall have resided in any county in this Territory ninety days, shall thereby gain a settlement in such county.

Fifth. Every minor whose parents, and every married woman whose husband, has no settlement in this Territory, who shall have resided ninety days in any county in this Territory, shall thereby gain a settlement in such county.

Sixth. Every minor who shall be bound as an apprentice to any person shall immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement.

Seventh. Every settlement when once legally acquired shall continue until it shall be lost or defeated by acquiring a new one in this Territory, or by wilful absence, from the county in which such legal settlement has been obtained for ninety days or more; and upon acquiring a new settlement, or upon the happening of such wilful absence, all former settlements shall be defeated and lost; and the provisions of this section shall apply to cases of settlement begun to be acquired or lost or defeated, as well heretofore as after.

Duties of overseers

(4013) § **5**. The overseers of the poor in each county shall have the oversight and care of all the poor persons in their county so long as they remain a county charge, and shall see that they are properly relieved and taken care of in the manner provided by law.

Counties having no poor house.

(4014) § **6**. It shall be the duty of the over-seers of the poor, in counties where no common poor house is established, two weeks next preceding the first Monday of April, in each year, to give public notice by having published in the newspaper or newspapers in their respective counties, or in case no such newspaper is published in the county, by posting upon three public places in the county, an advertisement certifying the poor that are to be provided for and asking for sealed proposals for their maintenance during the coming year, which sealed proposals shall be opened and acted upon by said overseers of the poor at their regular meeting, beginning on the said first Monday in April; but nothing herein contained shall prohibit any overseers of the poor from receiving and accepting propositions at any time for the keeping of such poor persons as may in the *interim* become a county charge, or of rejecting the propositions of such persons as they know to be unable to fulfill their obligations to said poor.

Annual allowance.

(4015) § **7**. The board of county commissioners, may in their discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years, and sound mind, and who from their general character will probably be be n-

efitted thereby, and also the parents of idiots and of children otherwise helpless, requiring the attention of their parents, and who are unable to provide for said children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, the said board taking the usual amount of charges in like cases as the rule for making such allowance.

Duties of over-seers when complaint is made.

(4016) § **8.** It shall be the duty of said over-seers of the poor, on any complaint made to them in behalf of the poor, to examine into the grounds of such complaint, and if in their judgment the said poor have not been sufficiently provided with the common necessaries of life, or have in any respect been ill-treated by the person or persons under whose charge they shall have been placed, to withhold any part of the compensation allowed to such person or persons for keeping them, as such over-seers may deem reasonable and proper, and remove said poor and place them in the care of some other person.

Overseers to keep "poor book."

(4017) § **9.** The overseers of the poor shall enter into the poor book of their respective counties all poor persons in their counties who are unable to care for themselves, and who shall in their judgment be entitled to the benefits of the provisions of this act, together with the date of such entry.

Poor person may apply to district court.

(4018) § **10.** If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseers of the poor of the county in which he or she resides, shall refuse to give such person the benefit thereof, upon application of such person, the judge of the district court of the county, or judicial subdivision, may, if he shall think proper, direct the said overseers of the poor to receive him or her, on the poor list, on his or her application therefor.

How to proceed when legal settlement is not known.

(4019) § **11.** If anyone within the description of poor persons specified in this act, shall be found in any county, and the overseers of the poor of such county shall be unable to ascertain and establish the last place of legal settlement of such person, they shall proceed in their discretion to provide for such poor person, in the same manner as other persons are hereby directed to be provided for.

Temporary relief.

(4020) § **12.** Whenever any person entitled to temporary relief as a pauper shall be in any county in which he or she has not a legal settlement, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief by placing him or her temporarily in the poor house of such county, if there be one, but if there be no poor house then they shall provide the same relief as is customary in cases where a legal settlement has been obtained.

Justice may issue warrant to send pauper away.

(4021) § **13.** Upon complaint of any overseer of the poor, any justice of the peace may issue his warrant, directed to and to be executed by any constable or any other person therein deisgnated, to cause any poor person found in the county of such overseer, likely to become a public charge and having no legal settlement therein to be sent and charged at the expense of the county, to the place where such person belongs, if the same can be conveniently

done; but if he or she cannot be removed, such person shall be relieved by such overseers whenever such relief is needed.

Overseers may appeal.

(4022) § **14.** If the overseers of the poor of any county in this Territory, to which any pauper shall have been removed, as above provided, shall feel themselves aggrieved by such order of removal, they may at any time within twenty days after such removal shall be made known to them, appeal from the decision of the justice ordering such removal to the district court of the county or judicial subdivision from whence the removal was ordered to be made, such appeal to be taken, tried and determined and the costs adjudged as in other cases of appeal from a judgment of a justice of the peace, and the order of removal may be vacated or affirmed according to the law and the right of the case.

When appeal to be heard

(4023) § **15.** Such appeal shall be heard at the term of the court next after the same is filed therein, if in the opinion of the court reasonable notice of the appeal has been given the opposite party; but if not thus given, the cause shall stand continued until the next term of court, and notice of the appeal be then given, if not before done.

May amend order.

(4024) § **16.** If the order of removal is defective, the court shall permit the same to be amended without costs, and after such amendment is made the appeal shall be heard and determined as if such order had not been defective.

Overseer to receive poor.

(4025) § **17.** If any person be removed by virtue of this act, from any county to any other place within this Territory, by warrant or under the hand of any justice of the peace as hereinbefore provided, the overseers of the poor of the county to which such person shall be removed are required to receive such person if he has a legal settlement in their county.

Overseers return, amount, how paid

(4026) § **18.** The overseers of the poor shall make a return to the clerk of the board of county commissioners of the sums of money required by the poor of their respective counties, within fifteen days after such contract hereinbefore provided for shall have been made, which sums shall be paid quarterly out of the county treasury, upon the order of the board of county commissioners in the same manner as other claims against the county are paid.

Compensation of overseers.

(4027) § **19.** The overseers of the poor in each county shall be entitled to receive each one dollar and fifty cents per day for each and every day during which they shall be necessarily employed in the discharge of their several duties as such, to be allowed by the board of county commissioners.

Account of overseers, must be paid for.

(4028) § **20.** The overseers of the poor of the several counties shall annually, at the first session of the board of county commissioners in the year, submit their accounts and make a sworn statement of their proceedings for the past year, which report shall be presented to the clerk of the board of county commissioners at least one day prior to the meeting of said board, and said board may then credit and allow said accounts so presented, and may draw on the county treasurer therefor, whose duty it shall be to pay the same out of any money in the county treasury not otherwise appropriated.

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(4029) § **21**. It snall be the duty of the overseers of the poor, on complaint made to them that any person not an inhabitant of their county is lying sick therein or in distress, without friends or money, so that he or she will likely suffer to examine into the case of such person and grant such temporary relief as the nature of the same may require, and if any person shall die within any county, who shall not have money or means necessary to defray his or her funeral expenses, it shall be the duty of the overseers of the poor of such county to employ some person to provide for and superintend the burial of such deceased person, and the necessary and reasonable expenses thereof shall be paid by the county treasurer upon the order of such overseers. Sickness or death.

CHAPTER LXVII.—PRINTING.

AN ACT Providing for the Printing of One Thousand Copies of Council Bill Number Thirty-one, entitled "An Act Establishing the School Districts for a Public School System in the Territory of Oklahoma, and Providing for Locating the School Sites therein.

[Took effect November 20, 1890.]

ARTICLE
1. Printing relative to schools
2. Printing relative to relief
3. Printing and distributing general laws.

ARTICLE 1.—PRINTING RELATIVE TO SCHOOLS.

SECTION.
1. Printing authorized.
2 Expenses of printing
3. Publication.
4. Distribution.
5. Expenses, how met.
6. Repeal.

Be it enacted by the Legislattve Assembly of the Territory of Oklahoma.

(4030) § **1**. That there be printed one thousand copies of Council Bill number thirty-one, entitled "An act establishing the school districts for a public school system in the Territory of Oklahoma, and providing for locating the school sites therein." Printing authorized.

(4031) § **2**. There is hereby appropriated out of any moneys in the Territorial treasury not otherwise appropriated, a sufficient sum of money to pay the expense of such printing. [*This act repealed.*] Expenses of printing

AN ACT to provide for the publication and distribution of the school laws.

[Took effect December 11, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Publication.

(4032) § **3**. There shall be published one thousand copies of the school law passed by the Legislative Assembly of Oklahoma Territory, in pamphlet form for immediate use.

Distribution.

(4033) § **4**. Immediately upon the taking effect of this act, the

Chap. 67. Secretary of the Territory shall cause the school laws of this Territory to be printed and published as provided in the first section of this act, and to be distributed among the several counties of this Territory as follows: To the county clerk of each organized county, seventy-five copies for distribution; twenty copies to the Governor of this Territory; ten copies to each member of the Legislative Assembly, and the balance thereof to be delivered to the superintendent of public instruction for distribution among the teachers of the Territory.

Expenses, how met.

(4034) § **5**. There is hereby appropriated out of any money in the Territorial treasury a sum of money sufficient to carry out the provisions of this act.

Repeal.

(4035) § **6**. An act entitled "An Act for printing one thousand copies of Council Bill Number Thirty-one, Approved———— day of————1890, be and the same is hereby repealed.

ARTICLE 2.—PRINTING RELATIVE TO RELIEF.

SECTION.
1. Distribution of copies and blanks.
2. Printing, cost.
3. Territorial board's expense, how paid
4. Two members may act.

[Took effect October 12, 1890.]

AN ACT to provide for the printing of the act providing for the distribution of aid to the destitute in the Territory of Oklahoma, and instruction issued thereunder by the Territorial Board of Relief, and to pay the expenses of that board.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Distribution of copies and blanks.

(4036) § **1**. The Territorial board of relief be and they are hereby authorized to contract for the printing of one thousand copies of the act providing for the distribution of aid to the destitute, approved September thirteenth, one thousand eight hundred and ninety, and one thousand copies of their instructions issued thereunder, and such blank orders as may be necessary for the use of the ward and township committees whereon to draw orders to the county relief boards for supplies, and one hundred blank forms of the oaths to be taken by the members of the county boards of relief.

Printing, cost.

(4037) § **2**. The Territorial board of relief are hereby authorized to draw their orders on the Secretary of the Territory for the payment of the price of the printing so contracted, and the Secretary shall pay the same out of the relief fund in his hands, and the order duly receipted by the one doing the printing shall be a voucher in his hands for the money so paid out by him.

Territorial board's expenses.

(4038) § **3**. That the Territorial board of relief are hereby authorized to draw upon the Secretary of the Territory for the amount of all necessary postage and stationery for themselves and county boards and their personal expenses necessarily incurred in the discharge of their duties. They shall make a sworn statement giving an itemized account of each days expenses, showing where each item was incurred and what for, and file the same with the

Secretary of the Territory subject to his approval, and on the same being duly receipted he shall pay the same out of the relief funds in his hands, and the receipts above named shall be a voucher in his hands for the money paid out.

Two members may act

(4039) § **4.** Any two members of the Territorial board of relief may act for the board.

ARTICLE 3.—PRINTING AND DISTRIBUTING GENERAL LAWS.

SECTION.
1. Newspaper and time designated.
2. Compensation for publication.
3. Expenses, how met.
4. Supervision of distribution.
5. Printing of laws and journals.
6. Orthography and grammar corrected.
7. Who to distribute laws.
8. Who to receive gratuitous copies.
9. Secretary to forward laws, who to; Auditor's action.
10. County clerks to demand laws, distribution.
11. Incoming officers to receive laws, etc., from predecessor.
12. Failure to deliver laws, etc., to successor.
13. Missing copies replaced, cost how met:
14. Secretary to sell copies.
15. Territorial library to be given copies.
16. Conflicting provisions.
17. Secretary to arrange publication.
18. Territorial appropriation for expenses.

[Took effect September 25, 1890.]

AN ACT Providing for the Publication in at least one Newspaper in each County in Oklahoma Territory of the Laws passed by the First Legislative Assembly of the Territory of Oklahoma.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

Newspaper and time designated.

(4040) § **1.** The laws of the First Legislative Assembly of the Territory of Oklahoma, except civil and criminal procedure in all the courts of this Territory shall be published in the Oklahoma State Capital and the said Oklahoma State Capital shall print and have the same published in the regular edition or editions of at least one leading newspaper in each county of said Territory: *Provided*, Said publication shall be made within thirty-five days after the final adjournment of this session of the Legislative Assembly.

Compensation for publication.

(4041) § **2.** The charge for said publication shall be the same as though published only in said Oklahoma State Capital and at the rate heretofore established by this Legislative Assembly for legal publications: *Provided, however*, That in no case shall the expense of printing said laws exceed the sum of twenty-five hundred dollars.

Expenses, how met

(4042) § **3.** Sufficient funds to pay for said publication are hereby appropriated out of any funds in the Territorial treasury not otherwise appropriated.

Supervision of distribution.

(4043) § **4.** That the printing and distribution of the laws authorized to be made in the Oklahoma [State] Capital, by act of this Legislature shall be done under the supervision and control of the Secretary of the Territory.

Chap. 67. AN ACT providing for the printing and distributing of the general laws and journals of of the Legislative Assembly of the Territory of Oklahoma.

[Took effect December 24, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Printing of laws and journals.

(4044) § **5.** The Secretary of the Territory shall procure the printing of one thousand copies of the general laws and joint resolutions and two hundred and fifty of the memorials, resolutions and journals of the Legislative Assembly passed at each session of the Legislative Assembly and have the same separately bound, as follows: Of the general laws and joint resolutions, one hundred copies in law sheep, and the remaining nine hundred copies, and the memorials, resolutions and journals in durable pamphlet form; and they shall all be prefaced by the Organic Act of the Territory of Oklahoma and a table of contents, and shall contain a full and correct index.

Orthography, and grammar corrected.

(4045) § **6.** In arranging the laws, memorials, resolutions and journals of the Legislative Assembly for publication, the Secretary aforesaid is hereby authorized to make such corrections in the orthography, grammatical construction and punctuation of the same, as in his judgment shall be deemed essential: *Provided*, That when any words or clauses shall be inserted, the same shall be enclosed in brackets.

Who to distribute laws.

(4046) § **7.** The Secretary aforesaid is hereby authorized to distribute the laws, after they shall have been printed and bound in the manner hereinafter specified.

Who to receive gratuitous copies.

(4047) § **8.** The following named officers of this Territory and of the counties therein, and none other, shall be entitled to receive without cost, one copy each of the printed volumes of the statutes and session laws of the Territory of Oklahoma published or purchased by the Legislative Assembly of this Territory for the distribution under the provisions of this act, to-wit: The Chief Justice of the Supreme Court of the Territory of Oklahoma, each Associate Justice of said court, each clerk of the district court, the United States attorney for the Territory of Oklahoma, the United States Marshal for the Territory of Oklahoma, the Governor of the Territory, the Secretary of the Territory, the Attorney-General, the Treasurer, the superintendent of public instruction, each county or district attorney, each judge of the probate court, each sheriff, each register of deeds, each county clerk or county auditor, each county treasurer, each county justice of the peace, each coroner, each county superintendent of public schools, each county or township assessor, and township trustee, if any there be, chairman of the board of county commissioners, each library association or historical society organized for the benefit of the public in any county or town of this Territory. And to each member of the Legislative Assembly a copy of the laws, bound in lawsheep, enacted by the assembly of which he was a member, and a printed copy of the journals.

Secretary to forward laws, who to, Auditor's action.

(4048) § **9.** It is hereby made the duty of the Secretary of this Territory, whenever any volumes of the laws of this Territory shall

come into his hands to transmit to each Federal and Territorial officer and United States commissioner, clerks of the United States district and Supreme Court and each county or district attorney, one volume of such laws prepaying the postage thereon, if sent by mail; and the Secretary shall state an account of his disbursements for postage or carriage of such volumes so sent by him, to the Auditor of the Territory, who is hereby authorized to audit the same, if in his judgment it be just and correct; and when so audited, the Treasurer of the Territory is authorized to pay the same out of any moneys in his hands not otherwise appropriated.

County clerks to demand laws· distribution.

(4049) § **10.** The county clerks of the several counties of this Territory shall on the first Monday of February next succeeding the time when any session of the Legislative Assembly shall be held, make a requisition upon the Secretary of the Territory for as many copies of the laws of said session as may be required to supply one copy to each county, or township office entitled to the same, and shall forward said requisition to said Secretary, who shall thereupon, or as soon thereafter as he shall receive the said volumes of laws, forward the number of copies called for by said requisition, to said clerk, either by express, or in any other secure manner, the charges of said carriage to be borne by the county receiving such laws. The county clerk, upon receiving the laws, shall distribute them to the several officers entitled by law to the same, taking in every instance, receipt to describe the date of the volumes so delivered, and to be thereafter filed in the office of said county clerk.

Incoming officers to receive laws, etc, from predecessor.

(4050) § **11.** Whenever any person shall be elected to fill any of the county, or township offices mentioned in section four, it shall be such person's duty, before taking posession of the said office, to procure from the county clerk of their county a copy of the receipt filed with said clerk by the outgoing officer for any volumes of the laws of this Territory; which copy of said receipt the person so elected shall exhibit to his predecessor in office, at the time when he shall assume the duties of his office, and shall require from his predecessor all the volumes of the laws which he may have received, as shown by the receipt on file with the county clerk; and it shall be the duty of said officer, after having received from his predecessor the volumes of the laws, as heretofore specified, to make out duplicate receipts of the same, one of said receipts to be given to his predecessor in office, and the other to be forthwith transmitted to the county clerk of the county, who is hereby required to file the same in his office.

Failure ro deliver laws, etc., to successor.

(4051) § **12.** In case any person holding an office in this Territory, or in any county or township thereof, shall, upon relinquishing said office to his successor fail or refuse to deliver over to his successor in office all the volumes of laws that have come into his possession by virtue of holding such office such person so failing or refusing shall be liable, upon conviction. to a fine of fifty dollars, or to imprisonment, in the county jail not exceeding twenty days; and it is hereby made the duty of the person succeeding to the office of such delinquent to file complaint against him before a justice of the peace; *Provided,* That in case the per-

son so failing or refusing to deliver said volumes of laws can show to the satisfaction of the justice that said volumes have been destroyed or stolen in a manner the said delinquent person should not be held responsible, then and in that case no penalty shall be imposed.

Missing copies replaced, cost how met.

(4052) § **13.** Whenever any county or township officer entitled to a copy of the laws of this Territory, shall, through the neglect or refusal of his predecessor in office to turn such laws over to him, or through loss occasioned by fire, theft or other cause for which said person cannot be held responsible, be without such laws such person is hereby authorized to make a written requisition upon the county clerk of his county for such volumes of his laws as may be required, and the said clerk is authorized to proceed in the manner hereinbefore provided for the general distribution to supply the said requsition: *Provided*, That the Secretary shall be authorized to charge the county from which such requisition is made, the cost, with ten per cent added, for each and every additional volume so furnished; which said amount shall be allowed by the board of commissioners of said county, and paid over to the Secretary in cash, who shall in turn pay the same to the Territorial Treasurer, taking his official receipt therefor.

Secretary to sell copies.

(4053) § **14.** The Secretary of the Territory shall sell to any party applying therefor, the volumes of laws of this Territory, for the cost and fifty per cent added per volume and pay over to the Territorial Treasurer all sums so received, taking the official receipt of said Treasurer therefor.

Territorial library to be given copies.

(4054) § **15.** Ten volumes of the laws of the Territory of Oklahoma passed by each Legislative Assembly shall be placed in the Territorial Library by the Secretary of the Territory and shall be kept therein for the use of any person visiting said library; but shall not be loaned or otherwise disposed of.

Conflicting povisions.

(4055) § **16.** If the provisions of any code, title, chapter or article conflict with or controvene the provisions of any former code, title, chapter or article, the provisions of the latter code, title, chapter or article must prevail as to all matter and questions arising thereunder out of the same subject matter.

Secretary to arrange the publication,

(4056) § **17.** In the publication of the codes and general statutes, the Secretary of the Territory has power, without altering the general plan, to renumber and readjust sections, chapters, articles and subdivisions, and also to place and distribute general statutes not now embraced in the codes in the same, under the appropriate chapter or other heading.

Territorial appropriation

(4057) § **18.** There is hereby appropriated out of the Territorial treasury a sum of money sufficient to pay any deficit which may remain unpaid for the publication of the laws—after the appropriation made by Congress for that purpose shall be exhausted

CHAPTER LXVIII.—PRISONERS.

SECTION.
1. Care and custody.
2. When and how sentenced.
3. Sheriff to deliver convicts.
4. Sheriff's accounts, etc.
5. Sheriff, compensation. fine.
6. Expenses met; sentenced prisoners, when conveyed to penitentiary.
7. Conveyance of sentenced prisoners.
8. Acts legalized.
9. Expatriation.

[Took effect September 14, 1890.]

AN ACT to make provisions for for the care and custody of persons sentenced to punishment in the penitentiary under the laws of the Territory of Oklohoma.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Care and custody.

(4058) § **1.** The Governor of the Territory of Oklahoma is hereby authorized and empowered to contract, in the name of this Territory, with the proper authorities of some other state or territory, for the care and custody of such persons as may be convicted of crimes punishable in the penitentiary, by the courts of this Territory and to bind this Territory to the faithful performance of such contract or contracts.

When and how sentenced.

(4059) § **2.** After entering into any such contracts, the Governor shall forthwith notify the several judges of the district courts of this Territory of the fact of making such contracts. and thereafter all persons convicted of crimes punishable by imprisonment in the penitentiary, shall be sentenced by the district courts to the penitentiary named in such contracts, with like force and effect as though such penitentiary was located in this Territory.

Sheriff to deliver convicts.

(4060) § **3.** The sheriff of each county within this Territory shall convey to the penitentiary aforesaid, all persons convicted in his county and sentenced to be confined in said prison, as soon as may be after sentenced. The sheriff shall deliver such convict or convicts, together with a certified copy of the judgment and sentence of the court ordering such imprisonment, to the warden of the penitentiary, and he shall in return deliver to the sheriff a receipt for each prisoner received, [naming each one], which receipt the sheriff shall file in the office of the clerk of the court where sentence was had.

Sheriff's account, etc.

(4061) § **4.** The sheriffs of the several counties within the Territory of Oklahoma shall, at the end of each term of the district courts held in their county, at one and the same time, convey to said penitentiary, all persons sentenced to imprisonment therein at that term of court. As compensation for the services so performed, the sheriff shall be allowed twelve and one-half cents per mile for himself and ten cents per mile for each guard, from the place of conviction to the nearest railroad station, computing the distance by the shortest usually travelled route, and two cents per mile for himself and one cent per mile for each guard for each mile travelled on railways from said starting point to said peniten-

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tiary and back to said station, computing distance by the shortest usually travelled railway route, and in addition thereto, the railway fare for himself and for the guards and prisoners, and one dollar per day for the subsistence of each of said persons while necessarily on the route. There shall be allowed, not to exceed one guard to four prisoners, unless the district court, or the judge thereof, in vacation, shall order additional guards for good cause shown. The accounts of the sheriffs for conveying the prisoners, made out in an itemized form showing fully the route travelled and the name of each guard, and if more than one to four prisoners, setting out the order therefor, which account shall be duly sworn to, and presented to the Auditing Officer of the Territory, and if found to be correct, that officer shall draw a warrant on the Territorial treasury for the sum so claimed, or for as much thereof as that officer shall find to be correct.

Sheriff compensation, fine.

(4062) § **5**. Should any sheriff fail to take all convicts at one and the same time, as in this act provided, or if he shall knowingly demand, claim or receive a greater compensation than herein provided for, he shall be guilty of a misdemeanor and, on conviction therefor, in the district court, shall be fined not less than one hundred dollars nor more than two hundred dollars and be removed from his office.

Expenses met; sentenced prisoners, when conveyed to penitentiary.

(4063) § **6**. A sum of money sufficient to defray the expenses growing out of this act, is hereby appropriated for that purpose. Persons sentenced to confinement in the penitentiary may, when so ordered by the district court passing the sentence, be conveyed to the penitentiary in which the prisoners of this Territory are confined, at a time fixed by such order with like force and effect, and in like manner as though it were the end of the term. And the officers and guards so conveying prisoners to penitentiary shall be entitled to the same compensation and to be paid in the same manner as provided for conveying and guarding prisoners to the penitentiary at the end of the term of court.

AN ACT to Legalize the Removal of Persons Convicted of Crime Punishable by Imprisonment in the Penitentiary from the Territory of Oklahoma to the Prison Provided for the Confinement of such Persons.

[Took effect November 1, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Conveyance of sentenced prisoners.

(4064) § **7**. That in all cases where persons have been or may hereafter be, by the courts of this Territory, sentenced to incarceration in the penitentiary, it shall be lawful for any officer of this Territory having such persons in charge, to convey them from this Territory into any other state or territory where provisions may have been made for their incarceration.

Acts legalized

(4065) § **8**. That such conveyances of such persons shall, under section 4066, be held and deemed to be a case especially authorized by law within the meaning of that section, and such imprisonment without the Territory of Oklahoma is hereby declared to be legal.

(4066) § **9.** No citizen of this Territory, being an inhabitant or resident of the same, shall be sent a prisoner to any place whatever out of the Territory, for any crime or offense committed within this Territory except in cases specially authorized by law, and every such imprisonment is hereby declared to be illegal. And if any such citizen shall be so imprisoned, he may for every such imprisonment maintain an action of false imprisonment in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported contrary to law, and against any person who shall contrive, write, seal, sign, or countersign any writing for such imprisonment or transportation, or shall be aiding and assisting in the same, or any of them, and shall recover triple costs besides damages, which damages so to be given shall not be less than five hundred dollars; and every person knowingly concerned in any manner as aforesaid, in such illegal imprisonment or transportation, contrary to this chapter, and being thereof lawfully convicted, shall be disabled from thenceforth to bear any office of trust or profit within this Territory: *Provided*, That if any citizen of this Territory, or any person or persons at any time resident in the same, shall have committed, or shall be charged with having committed, any treason, felony, or misdemeanor, in any other part of the United States or territories where he or she ought to be tried for such offense, he, she or they may be sent to the state or territory having jurisdiction of the offense.

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Expatriation.

CHAPTER LXIX.—PROPERTY.

ARTICLE.	
1	Nature of property.
2.	Ownership.
3	General definition.
4.	Estates in real property.
5.	Rights and obligations of owners.
6.	Uses and trusts.
7.	Powers.
8.	Personal property.
9.	Acquisition of property.

ARTICLE 1.—NATURE OF PROPERTY.

SECTION.	
1	Definition of ownership.
2.	What may be owned.
3	Wild animals may be owned, when.
4	Property classified.
5.	Real property defined.
6.	Land defined.
7.	Fixtures defined.
8	Appurtenances defined.
9.	Personal property defined.

(4067) § **1.** The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this compilation the thing of which there may be ownership is called property.

Definition of ownership.

(4068) § **2.** There may be ownership of all inanimate things which are capable of appropriation, or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill, as the composition of an author, the good will of a business, trade marks and signs, and of rights created or granted by statute.

What may be owned.

(4069) § **3.** Animals, wild by nature, are the subjects of own-

Wild animals may be owned, when.

ership while living only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

Property classified.

(4070) § **4.** Property is either:

First. Real or immovable.

Second. Personal or movable.

Real property defined.

(4071) § **5.** Real or immovable property consists of:

First. Land.

Second. That which is affixed to land.

Third. That which is incidental or appurtenant to land.

Fourth. That which is immovable by law.

Land defined.

(4072) § **6.** Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance.

Fixtures defined.

(4073) § **7.** A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs, or imbedded in it, as in the case of walls, or permanently resting upon it, as in the case of buildings, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws.

Appurtenances defined.

(4074) § **8.** A thing is deemed to be incidental or appurtenant to land, when it is by right used with the land for its benefit, as in the case of a way or water-course, or of a passage for light, air or heat, from or across the land of another. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

Personal property defined.

(4075) § **9.** Every kind of property that is not real is personal.

Owners.

SECTION.
1. Legislature cannot interfere with primary disposal of the soil.
2. Land below high-water mark.
3. Who may convey property.

Interest in Property.

SECTION.
4 Ownership classed.
5 Absolute ownership.
6. Qualified ownership.
7. Sole ownership.
8. Ownership of property.
9 Joint tenancy.
10 Partnership.
11. Tenancy in common.
12. Definition of tenancy in common.
13. Commencement and duration of interest in property.
14. Present interest.
15. Future interest.
16. Perpetual interest.
17. Limited interest.
18. Future estates classed.
19. When future interest vests.
20 When future interest is contingent.
21. Alternative contingencies.
22. Not void because of improbability.
23. Posthumous heir.
24. Future estates pass.
25. Mere possibility is not interest.
26. Estates of realty.
27. Applies to personal property, when.
28. Future interests limited.

Conditions of Ownerships.

SECTION.
29 Conditions of ownership defined.
30 Conditions classed.
31. Illegal conditions are void.
32. Conditions restraining marriage.
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Restraints Upon Alienation.

SECTION.
34. Restraint upon alienation limited.
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Accumulation.

SECTION.
37 Income, future interest.
38. Illegal accumulation.
39. Income, how directed.
40. Direction void beyond minority of beneficiaries.
41. Probate court may make allowance.

Rights of Owners.

SECTION.
42 Owners own products.
43. Undirected income.

Termination of Ownership.

SECTION.
44. Succession defeats contingency.
45. Future interest defeated.
46. When not defeated.
47. Same.

(4076) § **1**. The Legislative Assembly can pass no law interfering with the primary disposal of the soil. All property in this Territory has an owner, whether that owner is the United States, or the Territory, and the property public; or the owner an indi-

Legislature cannot interfere with primary disposal of the soil.

vidual, and the property private. The Territory may also hold property as a private proprietor.

Land below high water mark.

(4077) § **2**. The ownership of land below ordinary high-water mark, and of land below the water of a navigable lake or stream, is regulated by the laws of the United States or by such laws as, under authority thereof, the Legislative Assembly may enact. The Territory is the owner of all property lawfully appropriated or dedicated to its own use; and of all property of which there is no other owner.

Who may convey property

(4078) § **3**. Any person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this Territory.

Ownership classed.

(4079) § **4**. The ownership of property is either:

First. Absolute; or,

Second. Qualified.

Absolute ownership.

(4080) § **5**. The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

Qualified ownership.

(4081) § **6**. The ownership of property is qualified:

First. When it is shared with one or more persons.

Second. When the time of enjoyment is deferred or limited; or,

Third. When the use is restricted.

Sole ownership.

(4082) § **7**. The ownership of property by a single person is designated as a sole or several ownership.

Ownership of property.

(4083) § **8**. The ownership of property by several persons is either:

First. Of joint interests.

Second. Of partnership interests; or,

Third. Of interests in common.

Joint tenancy.

(4084) § **9**. A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

Partnership.

(4085) § **10**. A partnership interest is one owned by several persons, in partnership, for partnership purposes.

Tenancy in common.

(4086) § **11**. An interest in common is one owned by several persons not in joint ownership or partnership.

Definition of tenancy in common

(4087) § **12**. Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in section 4084.

Commencement and duration of interest in property

(4088) § **13**. In respect to the time of enjoyment, an interest in property is either:

First. Present or future; and,

Second. Perpetual or limited.

Present interest.

(4089) § **14**. A present interest entitles the owner to the immediate possession of the property.

(4090) § **15.** A future interest entitles the owner to the possession of the property only at a future period. Future interest.

(4091) § **16.** A perpetual interest has a duration equal to that of the property. Perpetual interest

(4092) § **17.** A limited interest has a duration less than that of the property. Limited interest.

(4093) § **18.** A future interest is either: Future interterest classed.

First. Vested; or,

Second. Contingent.

(4094) § **19.** A future interest vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest. When future interest vests.

(4095) § **20.** A future interest is contingent whilst the person in whom, or the event upon which, it is limited to take effect, remains uncertain. When future interest contingent.

(4096) § **21.** Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly. Alternative contingencies.

(4097) § **22.** A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect. Not void because of improbability.

(4098) § **23.** When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent. Posthumous heir

(4099) § **24.** Future interests pass by succession, will and transfer, in the same manner as present interests. Future estates pass.

(4100) § **25.** A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind. Mere possibility is not an interest.

(4101) § **26.** In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in sections 2734 to 2770, inclusive. Estates of realty

(4102) § **27.** The names and clasifications of interests in real property have only such application to interests in personal property as in this statute expressly provided. Applies to personal property.

(4103) § **28.** No future interest in property is recognized by the law, except such as is defined in this statute. Future interests limited.

(4104) § **29.** The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition. Conditions of ownership defined.

(4105) § **30.** Conditions are precedent or subsequent. The former fix the beginning, the latter the ending of the right. Conditions classed.

(4106) § **31.** If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void. Illegal conditions are void.

(4107) § **32.** Conditions imposing restraints upon marriage, Conditions restraining marriage

except upon the marriage of a minor, or of the widow of the person by whom the condition is imposed, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage.

Conditions restraining alienation.

(4108) § **33**. Conditions restraining alienation, when repugnant to the interest created, are void.

Restraint upon alienation limited.

(4109) § **34**. The absolute power of alienation cannot be suspended by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 4136.

Future limitation void.

(4110) § **35**. Every future interest is void in its creation, which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are are no persons in being by whom an absolute interest in possession can be conveyed.

Leases limited

(4111) § **36**. No lease or grant of agricultural land for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid. No lease or grant of any town or city lot, for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

Income; future interest.

(4112) § **37**. Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition; are governed by the rules prescribed in this article in relation to future interests.

Illegal accumulation

(4113) § **38**. All directions for the accumulation of the income of property except such as are allowed by this article are void.

Income may be directed, how.

(4114) § **39**. An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing, sufficient to pass the property out of which the fund is to arise as follows:

First. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

Second. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this article permitted for the vesting of future interests and during the minority of the benificiaries, and terminate at the expiration of such minority.

Direction void beyond minority of beneficiaries

(4115) § **40**. If in either of the cases mentioned in the last section, the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

Probate court may make allowance.

(4116) § **41**. When a minor, for whose benefit an accumulation has been directed, is destitute of other sufficient means of support and education, the probate court, upon application, may direct a suitable sum to be applied thereto, out of the fund.

(4117) § **42**. The owner of a thing owns also all its products and accessions. Owner owns products.

(4118) § **43**. When, in consequence of a valid limitation of future interest, there is a suspension of the power of alienation or of the ownership, during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest. Undirected income.

(4119) § **44**. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession. Succession defeats contingency.

(4120) § **45**. A future interest may be defeated in any manner, or by any act or means, which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation. Future interest defeated.

(4121) § **46** No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof. When not defeated.

(4122) § **47**. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner, and to the same extent, as if the precedent interest had continued to the same period. Same.

ARTICLE 3.—GENERAL DEFINITIONS.

SECTION.
1. Income includes what.
SECTION.
2. Limitation created, how.

(4123) § **1**. The income of property, as the term is used in this statute includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property. Income includes what.

(4124) § **2**. The delivery of the grant, where a limitation, condition or future interest is created by grant, and the death of the testator where it is created by will, is to be deemed the time of the creation of the limitation, condition or interest within the meaning of this statute. Limitation created, how.

ARTICLE 4.—ESTATES IN REAL PROPERTY.

Estates in General.

SECTION.
1. Duration of estates in real property.
2. Estate in fee.
3. Estates tail declared fees.
4. Limitation of remainder in fee.
5. Freehold estates.
6. Same.
7. Future estate limited.
8. Reversion defined.
9. Remainder defined.
10. Suspension of ownership limited.
11. Suspension of ownership defined.
12. Contingent remainder in fee.
13. Limitations on estates.
14. Subsequent life estates are void.
15. No remainder on successive lives.
16. Contingent remainder on a term of years.
17. Estates for life limited to person in being.
18. Conditional limitation.
19. Limitation to heirs of the body.
20. On death of first taker.
21. Unexecuted power.

Termination of Estates.

SECTION.
22. Termination of estate at will.
23. Notice served.
24. Action after notice.
25. Three days notice.
26. Action without three days notice.

Servitudes.

SECTION.
27. Easements attached to lands.
28. Easements not attached to lands.
29. Dominant tenement.
30. Who can create a servitude.
31. Who can not hold a servitude.
32. Extent of servitude.
33. Partition of servitude.
34. Right of future owner.
35. Right of action to enforce easement.
36. Action for possession of land.
37. Servitude extinguished how.

Real property within this Territory is governed by the law of this Territory, except where the title is in the United States.

Duration of estates in real property.

(4125) § **1**. Estates in real property, in respect to the duration of their enjoyment, are either:

First. Estates of inheritance, or perpetual estates.

Second. Estates for life.

Third. Estates for years; or,

Fourth. Estates at will.

Estate in fee

(4126) § **2**. Every estates of inheritance is a fee, and every such estate, when not defeasable or conditional, is a fee-simple or an absolute fee.

Estates tail declared fees.

(4127) § **3**. Estates tail are abolished; and every estate which would be at common law adjudged to be a fee-tail is a fee-simple, and if no valid remainder is limited thereon, is a fee-simple absolute.

Limitation, remainder in fee

(4128) § **4**. Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee-tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession, on the death of the first taker, without issue living at the time of his death.

Freehold, what are estates of.

(4129) § **5**. Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates

at will are chattel interests, but are not liable as such to sale on execution.

Same.

(4130) § **6**. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

Future estate limited.

(4131) § **7**. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time, or otherwise, of a precedent estate, created at the same time.

Reversion defined.

(4132) § **8**. Ths reversion is the residue of an estate left, by operation of law, in the grantor, or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

Remainder, what is.

(4133) § **9**. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

Suspension limited.

(4134) § **10**. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

Suspension further defined

(4135) § **11**. The suspension of all power to alienate the subject of the trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and re-invest the proceeds to be held under the same trust, is a suspension of the power of alienation within the meaning of section 4109.

Contingent remainder in fee.

(4136) § **12**. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

Limitations on estate.

(4137) § **13**. Subject to the rules of this chapter a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in sections 2734 to 2770, inclusive.

Subsequent life estates are void.

(4138) § **14**. Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons, the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created.

No remainder on successive lives

(4139) § **15**. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years unless it is for the whole residue of such term.

Contingent remainder on term of years

(4140) § **16**. A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it

is limited is such, that the remainder must vest an interest during the continuance or at the termination of lives in being at the creation of such remainder.

Estate for life limited to person in being.

(4141) § **17**. No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

Conditional limitations.

(4142) § **18**. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

Limitation to heirs of the body

(4143) § **19**. When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

On death of first owner.

(4144) § **20**. When a remainder, on an estate for life or for years, is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

Unexecuted power

(4145) § **21**. A general or special power of appointment does not prevent the vesting of a future estate, limited to take effect in case such power is not executed.

Termination of estate at will.

(4146) § **22**. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice to the tenant, in the manner prescribed by the next section, to remove from the premises within a period specified in the notice, of not less than one month.

Notice served.

(4147) § **23**. The notice prescribed by the last section must be in writing, and must be served by delivering the same to the tenant, or to some person of discretion residing on the premises; or if neither can, with reasonable diligence, be found, the notice may be served by affixing it on a conspicuous part of the premises, where it may be conveniently read.

Action after notice.

(4148) § **24**. After the notice prescribed by sections 4146 and 4147 has been served in the manner therein directed, and the period specified by such notice has expired, but not before, the landlord may re-enter or proceed according to law to recover possession.

Three days notice.

(4149) § **25**. Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued upon three days previous written notice of intention to re-enter, served in the mode prescribed by section 4147.

Action without three days' notice.

(4150) § **26**. An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time after the right to re-enter has accrued, without the notice prescribed in section 4149.

Easements attached to lands.

(4151) § **27**. The following land burdens or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

First. The right of pasture.
Second. The right of fishing.
Third. The right of taking game.
Fourth. The right of way.
Fifth. The right of taking water, wood, minerals and other things.
Sixth. The right of transacting business upon land.
Seventh. The right of conducting lawful sports upon land.
Eighth. The right of receiving air, light or heat from or over, or discharging the same upon or over land.
Ninth. The right of receiving water from or discharging the same upon land.
Tenth. The right of flooding land.
Eleventh. The right of having water flow without diminuation or disturbance of any kind.
Twelfth. The right of using a wall as a party wall.
Thirteenth. The right of receiving more than natural support from adjacent land or things affixed thereto.
Fourteenth. The right of having the whole of a division fence maintained by a coterminous owner.
Fifteenth. The right of having public conveyances stopped, or of stopping the same on land.
Sixteenth. The right of a seat in church.
Seventeenth. The right of burial.

Easements not attached to lands.

(4152) § **28**. The following land burdens or servitudes upon land, may be granted and held, though not attached to land:
First. The right to pasture, and of fishing and taking game.
Second. The right of seat in church.
Third. The right of burial.
Fourth. The right of taking rents and tolls.
Fifth. The right of way.
Sixth. The right of taking water, wood, minerals, or other things.

Dominant tenement.

(4153) § **29**. The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

Who can create a servitude.

(4154) § **30**. A servitude can be created only by one who has a vested estate in the servient tenement.

Who cannot hold.

(4155) § **31**. A servitude thereon cannot be held by the owner of the servient tenement.

Extent of servitude.

(4156) § **32**. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

Partition of servitude.

(4157) § **33**. In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

Right of future owner.

(4158) § **34**. The owner of a future estate in a dominant tenement, may use easements attached thereto, for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

Right of action to enforce easement.

(4159) § **35**. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

Action for possession of land.

(4160) § **36**. The owner in fee of a servient tenement, may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

Servitude extinguished, how.

(4161) § **37**. A servitude is extinguished:

First. By the vesting of the right to the servitude and the right to the servient tenement in the same person.

Second. By the destruction of the servient tenement.

Third. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent which is incompatible with its nature or exercise; or,

Fourth. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

ARTICLE 5.—RIGHTS AND OBLIGATIONS OF OWNERS.

Incidents of Ownership.

SECTION.
1. Land includes water.
2. Inheritance protected.
3. Rights of a tenant.
4. Rights limited by instrument creating tenancy.
5. Succession to the rights.
6. Assignees of lessor and lessee.
7. Notice to change terms.
8. Life lease rent.
9 Rent may be recovered after death.
10. Right of action for injury to the inheritance.

Boundaries.

SECTION.
11. Boundaries above and below surface.
12. Banks and beds of streams.
13. Highways.
14. Lateral support.
15. Trees on the land.
16. Trees on the line.

Obligations of Owners.

SECTION.
17. Repairs and taxes.
18. Boundaries and fences.

Land includes water.

(4162) § **1**. The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same.

Inheritance protected.

(4163) § **2**. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

Rights of tenant.

(4164) § **3**. A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the building, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy, and cultivate and harvest the crops growing at the end of his tenancy.

(4165) § **4.** A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section. Rights limited by instrument creating tenancy.

(4166) § **5.** A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had. Succession to the rights.

(4167) § **6.** Whatever remedies the lessor of any real property has against his immediate lessee for breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances, or relating to the title or possession of the premises. Assignees of lessor or lessee.

(4168) § **7.** In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease, the terms rent and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. Notice to change terms.

(4169) § **8.** Rent due upon a lease for life may be recovered in the same manner as upon a lease for years. Life lease rent.

(4170) § **9.** Rent dependent on the life of a person may be recovered after as well as before his death. May be recovered after death.

(4171) § **10.** A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action. Right of action for injury to the inheritance.

(4172) § **11.** The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it. Above and below surface.

(4173) § **12.** Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders upon a navigable lake or stream, takes to the edge of the ake or stream, at low-water mark, and all navigable rivers shall emain and be deemed public highways. In all cases where the pposite banks of any streams not navigable belong to different Banks and beds of streams

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persons, the stream and the bed thereof shall become common to both.

Highways.

(4174) § **13**. An owner of land, bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown.

Lateral support

(4175) § **14**. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations.

Trees on land.

(4176) § **15**. Trees whose trunks stand wholly upon the land of one owner, belong exclusively to him, although their roots grow into the land of another.

Trees on line.

(4177) § **16**. Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

Repair and taxes.

(4178) § **17**. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

Boundaries and fences.

(4179) § **18**. Coterminous owners are mutually bound equally to maintain:

First. The boundaries and monuments between them.

Second. The fences between them, unless one of them chooses to let his land lie open as a public common, in which case, if he afterwards encloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

ARTICLE 6.—USES AND TRUSTS.

SECTION.		SECTION.	
1.	Uses limited to those specified.	13.	Certain trust a power.
2.	Uses held under former statutes.	14.	Power in trust may be created.
3.	Use defined.	15.	Realty passes.
4.	Certain trust declared valid.	16.	Estates vested in trustees.
5.	Transfer must be direct.	17.	Contingent trusts.
6.	Limitation.	18.	Legal estate.
7.	Requisites of a trust.	19.	Undisposed estates.
8.	Trust is presumed, when.	20.	Limited disposal.
9.	Innocent purchaser.	21.	Grant separate from trust.
10.	Purpose of express trust.	22.	Acts of trustee void, when.
11.	Power in trust.	23.	Trust ceases when.
12.	Surplus liable to creditors.		

Limitation to those specified

(4180) § **1**. Uses and trusts, in relation to real property, are those only which are specified in this article.

Uses held under former statutes.

(4181) § **2**. Every estate which is now held as a use, executed under any former statute of this Territory, is confirmed as a legal estate.

Use defined.

(4182) § **3**. Every person who, by virtue of any transfer or devise, is entitled to the actual possession of real property, and the receipts of the rents and profits thereof, is deemed to have a

legal estate therein, of the same quality and duration, and subject to the same conditions as his beneficial interest.

Trust valid.

(4183) § **4.** The last section does not divest the estate of any trustee in a trust heretofore existing, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property, which is the subject of the trust.

Transfers must be made direct.

(4184) § **5.** Every disposition of real property, whether by transfer or will, must be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of or in trust for such person; and if made to any person, to the use of or in trust for another, no estate or interest vests in the trustee; but he must execute a release of the property to the beneficiary on demand, the latter paying the expense thereof.

Limitation of preceding.

(4185) § **6.** The preceding sections of this chapter do not extend to trusts arising or resulting by implication of law, nor prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

Requisites of a trust.

(4186) § **7.** No trust in relation to real property is valid, unless created or declared:

First. By a written instrument, subscribed by the trustee [trustor] or by his agent thereto authorized by writing.

Second. By the instrument under which the trustee claims the estate effected; or,

Third. By operation of law.

Trust presumed, when.

(4187) § **8.** When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

Innocent purchaser.

(4188) § **9.** No implied or resulting trust can predjudice the rights of a purchaser or incumbrancer of real property, for value and without notice of the trust.

Express trusts created for what purpose

(4189) § **10.** Express trusts may be created for any of the following purposes:

First. To sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust.

Second. To mortgage or release real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon.

Third. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term.

Fourth. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title.

Power in trust.

(4190) § **11.** A devise of real property to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, vests no estate in them; but the trust is valid as a power in trust.

Surplus liable to creditors

(4191) § **12.** Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

Certain trust a power.

(4192) § **13.** Where an express trust in relation to real property is created for any purpose not enumerated in the preceding sections, such trust vests no estate in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, is valid as a power in trust, subject to the provisions in relation to such powers contained in article 7.

Power in trust may be created.

(4193) § **14.** Nothing in this chapter prevents the creation of a power in trust for any of the purposes for which an express trust may be created.

Realty passes

(4194) § **15.** In every case where a trust is valid as a power in trust, the real property to which the trust relates, remains in or passes by succession to the persons otherwise entitled, subject to the execution of the trust as a power in trust.

Estate in trustees limited

(4195) § **16.** Except as hereinafter otherwise provided, every express trust in real property, valid as such, in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

Contingent trust.

(4196) § **17.** Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

Legal estate.

(4197) § **18.** The grantee or devisee of real property subject to a trust acquires a legal estate in the property, against all persons except the trustees and those lawfully claiming under them.

Undisposed estates.

(4198) § **19.** Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust, or his successors.

Limited disposal.

(4199) § **20.** The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust during his life, or for a term of years, by the instrument creating the trust.

Grant separate from trust.

(4200) § **21.** Where an express trust is created in relation to real property, but is not contained or delared in the grant to the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of the subsequent creditors of the trustee not having notice of the trust, and in favor of purchasers from such trustee without notice, and for a valuable consideration.

(4201) § **22.** Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees, in contravention of the trust, is absolutely void. Act of trustee void, when.

(4202) § **23.** When the purpose for which an express trust was created ceases, the estate of the trustee also ceases. Trust ceases.

ARTICLE 7.—POWERS.

SECTION.
1. Only specified powers valid.
2. Power of attorney not included.
3. Power defined.
4. Author of power defined.
5. Powers classed.
6. General powers.
7. Special powers.
8. Beneficial powers.
9 Power in trust.
10. General power in trust.
11. Special power in trust.
12. Capacity to create power.
13. Power vests in whom.
14 Power may be created, how.
15 Reserved how.
16. Power irrevocable unless right reserved.
17. Lien of power defined.
18. Power a security.
19. Capacity lacking.
20. Married woman may execute power.
21. Acknowledgment.
22. Execution of a power.
23. Power vested in many persons.
24. Execution of power by will.
25. Execution by grant.
26. When instrument is not sufficient to pass estate.
27. Observance of surplus formalities.
28. Nominal conditions disregarded.
29. Binding conditions.
30 Consent of third party must be expressed.

SECTION.
31. Consent of survivors.
32. Validity without recital of power.
33. Instrument is a conveyance.
34. Disposition of charge.
35. Time runs from, when.
36. Legality of estate.
37. Married woman's power.
38. Relief from defects
39. Fraud.
40. Power to a woman.
41. Estates changed into fee.
42. Same, no particular estate limited.
43. Same, no trust given.
44. Same, general power to devise.
45. Power absolute.
46 Reserved power.
47. Beneficial power valid.
48. Power to lease.
49 Power annexed to estate.
50. Extinguishing grant.
51. Mortgage binds power.
52. Effects of lien by mortgage.
53. Creditors' claim.
54. Other powers void.
55 Enforceable powers.
56 Trust power still imperative.
57. Equal shares.
58. Discretionary powers.
59. Death of trustee.
60. District court.
61 Trust for benefit of creditors.
62. Defects cured.
63. Certain law applies.

(4203) § **1.** Powers in relation to real property are those only which are specified in this article. Only specified powers.

(4204) § **2.** The provisions of this article do not extend to a simple power of attorney to convey real property in the name of the owner and for his benefit. Power of attorney excluded.

(4205) § **3.** A power, as the term is used in this article, is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose. Definition of power.

(4206) § **4.** The author of a power, as the term is used in this title, is the person by whom a power is created, whether by grant or devise; and the holder of a power is the person in whom a power is vested, whether by grant, devise or reservation. Definition of author.

(4307) § **5.** Powers are general or special, and beneficial or in trust. Powers classed.

(4208) § **6.** A power is general when it authorizes the alienation or incumbrance of a fee in the property embraced therein, by General powers.

Chap. 69. grant, will or charge, or any of them, in favor of any person whatever.

Special powers. (4209) § **7**. A power is special:

First. When a person or class of persons is designated, to whom the disposition of property under the power is to be made; or,

Second. When it authorizes the alienation or incumbrance, by means of a grant, will, or charge, of only an estate less than a fee.

Beneficial power. (4210) § **8**. A power is beneficial when no person other than its holder has, by the terms of its creation, any interest in its execution.

Power in trust. (4211) § **9**. A power is in trust when any person or class of persons, other than its holder, has, by the terms of its creation, an interest in its execution.

General power in trust. (4212) § **10**. A general power is in trust when any person or class of persons other than its holder, is designated as entitled to the proceeds or the disposition or charge authorized by the power, or to any portion of the proceeds or other benefits to result from its execution.

Special power in trust. (4213) § **11**. A special power is in trust:

First. When the disposition or charge which it authorizes is limited to be made to any person or class of persons other than the holder of the power; or,

Second. When any person or class of persons, other than the holder, is designated as entitled to any benefit from the disposition or charge authorized by the power.

Capacity to create. (4214) § **12**. No person is capable of creating a power who is not at the same time capable of granting some estate in the property to which the power relates.

Vests in whom (4215) § **13**. A power may be vested in any person.

A power may be created, how (4216) § **14**. A power may be created only:

First. By a suitable clause contained in a grant of some estate in the real properly to which the power relates, or in an agreement to execute such a grant; or,

Second. By a devise contained in a will.

Reserved power. (4217) § **15**. The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power thus reserved is subject to the provisions of this article in the same manner as if granted to another.

Power irrevocable unless right reserved. (4218) § **16**. Every power, beneficial or in trust, is irrevocable unless an authority to revoke it is given or reserved in the instrument creating the power.

Lien of power defined. (4219) § **17**. A power is a lien upon the real property which it embraces from the time the instrument in which it is contained takes effect; except that against creditors, purchasers and incumbrancers, in good faith and without notice, from any person having an estate in such real property, the power is a lien only from the time the instrument in which it is contained is duly recorded.

Power a security. (4220) § **18**. Where the power to sell real property is given

to a mortgagee or other incumbrancer, in an instrument intended to secure the payment of money the power is to be deemed a part of the security and vests in any person who, by assignment becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded.

Capacity lacking.

(4221) § **19**. A power cannot be executed by any person not capable of disposing of real property.

Married women may execute power.

(4222) § **20**. A married woman may execute a power during her marriage without the concurrence of her husband, unless otherwise prescribed by the terms of the power.

Same, acknowledgement.

(4223) § **21**. No power can be executed by a married woman before she attains her majority, nor without being acknowledged by her.

Execution of a power.

(4224) § **22**. A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power, if the person executing the power was the actual owner.

Many persons, survivor.

(4225) § **23**. Where a power is vested in several persons all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.

Execution by a will.

(4226) § **24**. Where a power to dispose of real property is confined to a disposition by devise or will, the instrument of execution must be a will duly executed according to the provisions of the chapter on wills.

Execution by grant.

(4227) § **25**. Where a power is confined to a disposition by grant it cannot be executed by will even though the disposition is not intended to take effect until after the death of the person executing the power.

When instrument not sufficient to pass estate.

(4228) § **26**. Where the author of a power has directed or authorized it to be executed by an instrument which would not be sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the rules before prescribed in this article.

Observance of surplus formalities not necessary.

(4229) § **27**. Where the author of a power has directed any formalities to be observed in its execution, in addition to those which would be sufficient to pass the estate, the observance of such additional formalities is not necessary to a valid execution of the power.

Nominal condition may be disregarded.

(4230) § **28**. Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

Binding conditions

(4231) § **29**. With the exceptions contained in the preceding sections, the intentions of the author of a power as to the mode, time and conditions of its execution must be observed, subject to the power of a district court to supply a defective execution in the cases provided in sections 4240 and 4264.

Consent of third party must be expressed.

(4232) § **30**. When the consent of a third person to the execution of a power is requisite,, such consent must be expressed in the instrument by which the power is executed, or be certified

in writing thereon. In the first case the instrument of execution, in the second, the certificate, must be subscribed by the party whose consent is required, and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged.

Consent of survivors.

(4233) § **31**. Where the consent of several persons to the execution of a power is requisite, all must consent thereto; but in case of any one or more of them is dead, the consent of the survivors is sufficient, unless otherwise prescribed by the terms of the power.

Validity without recital by power.

(4234) § **32**. Every instrument executed by the holder of a power, conveying an estate or creating a charge which such holder would have no right to convey or create except by virtue of his power, is to be deemed a valid execution of the power, even though not recited or referred to therein.

Instrument is a conveyance

(4235) § **33**. Every instrument except a will, in execution of a power, even though the owner is one of revocation only, is to be deemed a conveyance.

Disposition of charge valid to extent of power

(4236) § **34**. A disposition of charge, by virtue of a power more extensive than was authorized thereby, is not therefore void; but every estate or interest so created, so far as it is embraced by the terms of the power, is valid.

Time runs from

(4237) § **35**. The period during which the absolute right of alienation may be suspended by an instrument in execution of a power, must be computed, not from the date of the instrument, but from the time of the creation of the power.

Legality of estate

(4238) § **36**. No estate or interest can be given or limited to any person, by an instrument in execution of a power, which could not have been given or limited at the time of the creation of the power.

Married woman.

(4239) § **37**. When a married woman, entitled to an estate in fee, is authorized by a power to dispose of such an estate during her marriage, she may by virtue of such power, create any estate which she might create if unmarried.

Relief from defects

(4240) § **38**. Purchasers for a valuable consideration, claiming under a defective execution of a power, are entitled to the same relief as similar purchasers claiming under a defective conveyance from an actual owner.

Fraud.

(4241) § **39**. Instruments in execution of a power are affected by fraud in the same manner as like instruments executed by owners or trustees.

Power to woman.

(4242) § **40**. A general and beneficial power is valid which gives to a married woman power to dispose, during her marriage, and without the concurrence of her husband, of a present or future estate in real property conveyed or devised to her in fee.

Estates changed into fee

(4243) § **41**. Where an absolute power of disposition, not accompanied by any trust, is given to the owner of a particular estate for life or years, such estate is changed into a fee, absolute in favor of creditors, purchasers and incumbrancers, but subject to any future estates limited thereon, in case the power should not be executed, or the property should not be sold for the satisfaction of debts

(4244) § **42**. Where an absolute power of disposition, not accompanied by any trust, is given to any person to whom no particular estate is limited, such person also takes a fee, subject to any future estate that may be limited thereon, but absolute in favor of creditors, purchasers and incumbrancers. Same.

(4245) § **43**. In all cases where an absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the holder of the power, he is entitled to an absolute fee. Same

(4246) § **44**. Where a general and beneficial power to devise the inheritance is given to the owner of an estate for life or for years, he is deemed to possess an absolute power of disposition, within the meaning of the last three sections. Same.

(4247) § **45**. Every power of disposition is deemed absolute, by means of which the holder is enabled in his lifetime to dispose of the entire fee, in possession or in expectancy, for his own benefit. Power absolute.

(4248) § **46**. Where the grantor in any conveyance reserves to himself for his own benefit, an absolute power of revocation such grantor is still to be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned. Reserved power.

(4249) § **47**. A special and beneficial power is valid which is granted: Beneficial power valid.

First. To a married woman to dispose, during the marriage, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

Second. To the owner of a life estate in the property embraced in the power to make leases, commencing in possession during his life.

(4250) § **48**. A special and beneficial power to make leases of agricultural land for more than ten years, or of town or city lots for more than twenty years, is void only as to the time beyond ten or twenty years, and authorizes leases for those terms or less. Power to lease

(4251) § **49**. The power of the owner of a life estate to make leases is not transferable as a separate interest, but is annexed to his estate, and will pass, unless specially excepted, by any grant of such estate. If specially excepted in any such grant, it is extinguished. Power annexed to estate

(4252) § **50**. The power of the owner of a life estate to make leases may be released by him to any person entitled to a future estate in the property and is thereupon extinguished. Extinguishing grant

(4253) § **51**. A mortgage executed by the owner of a life estate having a power to make leases, or by a married woman, by virtue of any beneficial power, does not extinguish or suspend the power, but the power is bound by the mortgage in the same manner as the real property embraced therein. Mortgage binds power.

(4254) § **52**. The effects on the power of a lien by mortgage, such as is mentioned in the last section, are: Effects of same.

First. That the mortgagee is entitled to an execution of the power, so far as the satisfaction of his lien may require it; and,

Second. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage in the same manner as if in terms embraced therein.

Creditors claims

(4255) § **53**. Every special and beneficial power is liable to the claims of creditors, in the same manner as other interests that cannot be reached by execution, and the execution of the power may be adjudged for the benefit of the creditors entitled.

Other powers void.

(4256) § **54**. No beneficial power, general or special, not already specified and defined in this article, can hereafter be created.

Enforceable powers.

(4257) § **55**. Every trust power, unless its execution is made expressly to depend on the will of the trustee, is imperative, and imposes a duty on the trustee, the performance of which may be compelled for the benefit of the parties interested.

Trust power still imperative.

(4258) § **56**. A trust power does not cease to be imperative where the trustee has the right to select any, and exclude others of the persons designated as the beneficiaries of the trust.

Equal shares.

(4259) § **57**. Where a disposition under a power is directed to be made to among or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated are entitled in equal proportion.

Discretionary power.

(4260) § **58**. Where the terms of a power import that the estate or fund is to be distributed among several persons designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others.

Death of trustee.

(4261) § **59**. If the trustee of a power, with the right of selection dies leaving the power unexecuted its execution must be adjudged for the benefit equally of all the persons designated as objects of the trust.

District court.

(4262) § **60**. Where a power in trust is created by will, and the testator has omitted to designate, expressly or by necessary implication, by whom the power is to be executed, its execution devolves on the district court.

Creditors, trust for benefit.

(4263) § **61**. The execution, in whole or in part, of any trust power, may be adjudged for the benefit of the creditors or assignees of any person entitled, as one of the beneficiaries of the trust, to compel its execution, when his interest is transferable.

Defects cured

(4264) § **62**. Where the execution of a power in trust is defective in whole or in part, under the provisions of this article, its proper execution may be adjudged in favor of the persons designated as the objects of the trust.

Certain law applies

(4265) § **63**. The provisions of the article on uses and trust, saving the rights of other persons from prejudice by the misconduct of trustees and authorizing the court to remove and appoint trustees; the provisions of the article on succession, devolving express trusts upon the court on the death of the trustee; and the provisions of section 4202 in article on uses and trusts, apply equally to powers in trust, and the trustees of such powers.

Things in Action.

SECTION
1. Domicile of personal property.
2. Thing in action defined.
SECTION.
3. Things in action is transferable

General Provisions.

SECTION.
4. Ship defined.
5. Appurtenances.
6. Navigation classed.
7. Domestic and foreign ships.
SECTION.
8 Power of court.
9. Possessor of ship liable.
10 Registry, enrollment and license.

Rules of Navigation.

SECTION.
11 Meeting ships.
12 Infringement of rules, damages.
SECTION.
13. Default presumed.
14. Liability defined.

Other Kinds of Personal Property.

SECTION.
15. Trade-mark limited.
16. Good will defined.
SECTION.
17. Good-will is property.
18. Title deed.

(4266) § **1.** If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile. Domicile of personal property.

(4267) § **2.** A thing in action is a right to recover money or other personal property, by judicial proceeding. Thing in action

(4268) § **3.** A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner, it passes to his personal representatives, except where, in the cases provided by law, it passes to his devisees or successors in office. A thing in action is transferable

(4269) § **4.** The term "ship" or "shipping," when used in this code, includes steamboats, sailing vessels, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons. Ship defined.

(4270) § **5.** All things belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances. Appurtenances

(4271) § **6.** Ships are engaged either in foreign or domestic navigation. Ships are engaged in foreign navigation when passing to or from a foreign country; and in domestic navigation when passing from place to place within the United States. Navigation classed.

(4272) § **7.** A ship in a port of the state or territory to which it belongs is called a domestic ship; in another port it is called a foreign ship. Domestic and foreign ships.

(4273) § **8.** If a ship belongs to several persons, not partners, Court Power.

and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction.

Possessor liable.

(4274) § **9.** If the owner of a ship commits its possession and navigation to another, that other and not the owner, is responsible for its repairs and supplies.

Registry enrollment and license.

(4275) § **10.** The registry, enrollment, and license of ships are regulated by acts of Congress.

Meeting ships.

(4276) § **11.** In the case of ships meeting, the following rules must be observed in addition to those prescribed by any statutes of this Territory, which relate to navigation:

First. Whenever any ship, proceeding in one direction, meets another ship proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass to the port side of each other, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to a due regard to the dangers of navigation.

Second. A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of that fair way or mid-channel which lies on the starboard side of the steamer. A steamer when passing another steamer in such channel must always leave the other upon the larboard side.

Third. When steamers must inevitably or necessarily cross so near that, by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other.

The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within sound of the steam whistle, or by the regulations concerning lights upon steamers, or other matters prescribed under authority of any act of Congress.

Infringement of the rule. damages.

(4277) § **12,** If it appears that a collision was occasioned by failure to observe any rule of the foregoing section, the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, nnless it appears that the circumstances of the case made a departure from the rule necessary.

Default presumed.

(4278) § **13.** Damage to person or property arising from the failure of a ship to observe any rule of section 4276, must be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary.

Liability defined.

(4279) § **14.** Losses caused by collision are to be borne as follows:

First If either party was exclusively in fault he must bear his own loss, and compensate the other for any loss he has sustained.

Second, If neither was in fault, the loss must be borne by him on whom it falls.

Third. If both were in fault the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned; or,

Fourth. If it cannot be ascertained where the fault lies, the loss must be equally divided.

Trade-marks limited.

(4280) § **15**. One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade mark, any form, symbol or name which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on.

Good-will.

(4281) § **16**. The good-will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

It is property.

(4282) § **17**. The good will of a business is property, transferable like any other.

Title deeds.

(4283) § **18**. Instruments essential to the title of real property, and which are not kept in a public office as a record pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title.

ARTICLE 9.—ACQUISITION OF PROPERTY.

SECTION.
1. Property, how acquired.
2 Title by occupancy.
3. Title by prescription.

Accession to Real Property.

SECTION.
4. Land fixtures; tenants.
5. Riparian accretions.
6. Removals in mass.
7. Islands in navigable streams
8. Islands in other streams.
9. Islands formed by new channel.
10. Ancient bed.

Accession to Personal Property.

SECTION.
11 Things inseparably united.
12 Dominant part defined.
13. How determined.
14 Work and materials.
15 Blended materials.
16. Admixture of material.
17. Wilful uses.
18. Alternative of kind or value.
19. Damages.

Property acquired, how.

(4284) § **1**. Property is acquired by:
First. Occupancy;
Second. Accession;
Third. Transfer;
Fourth. Will; or,
Fifth. Succession.

Title by occupancy.

(4285) § **2**. Occupancy for any period confers a title sufficient

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against all except the Territory, and those who have title by prescription, accession, transfer, will or succession.

Prescription

(4286) § **3.** Occupancy for the period prescribed by civil procedure, or any law of this Territory as sufficient to bar an action for the recovery of the property, confers a title thereto, denominated a title by prescription, which is sufficient against all.

Land fixtures; tenants

(4287) § **4.** When a person affixes his property to the land of another without an agreement permitting him to remove it, the the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it: *Provided*, That a tenant may remove from the demised premises any time during the continuance of his term anything affixed thereto for purpose of trade, manufacture, ornament or domestie use, if the removal can be affected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

Riparian accretions.

(4288) § **5.** Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank. subject to any existing right of way over the bank.

Removals in mass.

(4289) § **6.** If a river or stream navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

Islands in navigable streams.

(4290) § **7.** Islands and accumulations of land formed in the beds of streams which are navigable, belong to the Territory, if there is no title or prescription to the contrary.

Islands in other streams

(4291) § **8.** An island or accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed, or if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawu through the middle of the river.

Island formed by a new channel

(4292) § **9.** If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

Ancient bed

(4293) § **10.** If a stream, navigable or not navigable forms a new course, abandoning its ancient bed, the owners of the land newly occupied take, by way of indemnity, the ancient bed abandoned, each in proportion to the land of which he has been deprived.

Things inseparably united

(4294) § **11.** When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

Dominant part defined.

(4295) § **12.** That part is to be deemed the principal to which

the other has been united only for the use, ornament or completion of the former, unless the latter is the more valuable and has been united without the knowledge of its owner, who may in the latter case require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

How determined

(4296) § **13**. If neither party can be considered the principal, within the rules prescribed by the last section, the more valuable, or if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

Work and material.

(4297) § **14**. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

Blended materials.

(4298) § **15**. Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

Admixtures of materials

(4299) § **16**. When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner, without whose consent the admixture was made, may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

Wilful uses.

(4300) § **17**. The foregoing sections of this chapter are not applicable to cases in which one wilfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

Alternative of kind or value.

(4301) § **18**. In all cases where one, whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure and quality or the value thereof; or where he is entitled to the product, the value thereof in place of the product.

Damages.

(4302) § **19**. One who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this chapter.

CHAPTER LXX.—PROCEDURE—CIVIL.

AN ACT to Prescribe a Code of Civil Procedure.

[Took effect December 25, 1890.]

ARTICLE.
1. Form of action.
2. Parties to action.
3. Joinder of causes of action.
4. Causes of action that survive.
5. Special causes of action.
6. Actions, where commenced.
7. Actions, how commenced.
8. Actions, when dismissed.
9. Pleadings.
10. Formation and order of issues.
11. Issues.
12. Continuances.
13. Change of venue.
14. Depositions.
15. Written evidence
16. Witnesses.
17. Offer before trial.
18. Trial by jury.
19. Trial by court.
20. Trial of agreed cases.
21. Trial by referee.
22. New trial.
23. Judgment.
24. Appeal.
25. Executions.
26. Arbitration.
27. Arrest and bail.
28 Attachment.
29. Contempts of court.
30. Conveyances by commissioners
31. Divorce.
32. Ejectment.
33. Foreclosure of mortgage.
34. Informations.
35. Injunctions.
36. Mandate and prohibition.
37. Partition.
38. Principal and surety.
39. Receivers.
40. Replevin.
41. General provisions.
42. Occupying claimants.
43. Time in which actions may be brought.

ARTICLE 1.—FORM OF ACTION.

SECTION.
1. One form of action.
2. Plaintiff and defendant.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

This act shall be known as the civil procedure of the Territory of Oklahoma.

One form of action.

(4303) § **1**. There shall be no distinction in pleading and practice between actions at law and suits in equity; and there shall be but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action.

Plaintiff and defendant.

(4304) § **2**. In such action, the party complaining shall be known as the plaintiff and the adverse party as the defendant.

SECTION.
1. Real party; exemption.
2. Executors, trustees; etc.; how may sue.
3. Action upon official bonds.
4. Married women.
5. Infants.
6. Next friend, written consent, costs, removal.
7. Bond of next friend.
8 Guardian *ad litem.*
9. Guardian not liable for costs; exemptions.
10. Poor person, attorney for.
11. Order, when annulled.
12. Who plaintiffs.
13. Unmarried woman, seduction, damage.
14. Parent or guardian, seduction.
15. When wife or mother may sue.
16. Father or guardian may sue for injury to child.
17. Joinder of plaintiffs barred; striking from record.
18. Who defendants.
19. Joint interest; when one may sue for all.
20. Persons liable on same instrument.
21. When no abatement, proceedings, transfer.
22 Making new parties.
23. Interpleader, otice,
24 New party, notice.
25. Party in action for purchase money; decree.
26. Assignor, when defendant: rule as to set off, etc.
27. New party how brought in by defendant.

(4305) § **1**. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in the next section; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract. Real party exemptions

(4306) § **2**. An executor, administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue, without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another. It shall not be necessary to make an idiot or lunatic a joint party with his guardian or committee, except as may be required by statute. Executors, trustees, etc; how may sue.

(4307) § **3**. Actions upon official bonds, and bonds payable to the Territory, shall be brought in the name of the Territory of Oklahoma, upon the relation of the party interested. Action upon official bonds.

(4308) § **4**. A married woman may sue and be sued in the same manner as if she were unmarried. Married women.

(4309) § **5**. When an infant shall have the right of action, such infant shall be entitled to bring suit thereon, and the same shall not be delayed or deferred on account of such infant not being of full age. Infants.

(4310) § **6**. Before any process shall be issued in the name of an infant who is a sole plaintiff, a competent and responsible person shall consent in writing to appear as the next friend for such infant; and such next friend shall be responsible for the costs of such action; and thereupon process shall issue as in other cases. But where it shall appear to the court that such next friend is incompetent or irresponsible, the court may remove him, and permit some suitable person to be substituted without prejudice to the progress of the action. Next friend, written consent, costs, removal.

(4311) § **7**. The court, in its discretion, may require the next friend of an infant, in an action for the recovery of any debt or damages, to execute a written undertaking to such infant, with Bond of next friend.

sufficient sureties to be approved by the court that the next friend shall duly account to the infant for all moneys which may be recovered in such action.

Guardian ad litem.

(4312) § **8.** An infant defendant shall appear and defend by guardian appointed by the court or chosen by such infant with the consent of the court.

Guardian not liable for costs, exception.

(4313) § **9.** No person appointed as guardian shall be liable for the costs of the action, unless charged by the special order of the court of some personal misconduct in the same.

Poor persons, attorney for.

(4314) § **10.** Any poor person, not having sufficient means to prosecute or defend an action may apply to the court in which the action is intended to be brought, or is pending, for leave to prosecute or defend as a poor person. The court, if satisfied that such person has not sufficient means to prosecute or defend the action, shall admit the applicant to prosecute or defend as a poor person, and shall assign him an attorney to defend or prosecute the cause, and all other officers requisite for the prosecution or defense, who shall do their duty therein without taking any fee or reward therefor from such poor person.

Order, when annulled.

(4315) § **11.** If any person so admitted be guilty of any improper conduct, or of any unjustifiable delay in the progress of such action, the court may, in its discretion, annul such order, and he shall thereafter be deprived of all benefit of the order admitting him to prosecute and defend as such poor person.

Who plaintiff.

(4316) § **12.** All persons having an interest in the subject of the action, and in obtaining the relief demanded, shall be joined as plaintiffs, except as otherwise provided in this act.

Unmarried woman, seduction, damages.

(4317) § **13.** Any unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages as may be assessed in her favor.

Parent or guardian; seduction.

(4318) § **14.** A father, or, in case of his death, or desertion of his family, or imprisonment, the mother may prosecute as plaintiff for the seduction of the daughter, and the guardian for the seduction of the ward, though the daughter or the ward be not living with, or in the service of the plaintiff, at the time of the seduction or afterwards, and there be no loss of service. When the action is brought by the guardian, the damages recovered shall inure to the ward.

When wife or mother may sue.

(4319) § **15.** When a husband or father has deserted his family, or is imprisoned, the wife or mother may prosecute or defend, in his name, any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had.

Father or guardian may sue for injury to child.

(4320) § **16.** A father, or in case of his death, or desertion of his family, or imprisonment, the mother may maintain an action for the injury or death of the child, and the guardian for the injury or death of his ward. But when the action is brought by the guardian for an injury to his ward, the damages shall inure to the benefit of his ward.

Joinder of plaintiffs barred; striking from record

(4321) § **17.** In cases where part only of the persons entitled to bring an action are barred by the statute of limitations, all may be joined as plaintiffs; and when it shall appear to the satisfaction

of the court, by admission or otherwise, that part of the plaintiffs are barred by the statute the court, upon motion, shall order the names of such plaintiffs to be stricken from the record, and the action may be prosecuted by those not barred.

Who defendant.

(4322) § **18**. Any person may be made a defendant who has, or claims, an interest in the controversy adverse to the plaintiffs, or who is a necessary party to a complete determination or settlement of the questions involved.

Joint interest, when one may sue for all

(4323) § **19**. Of the parties in the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint, and when the question is one of a common or general interest of many persons, or where the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Persons liable on same instrument

(4324) § **20**. Persons severally and immediately liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action, at the option of the plaintiff.

When no abatement, proceedings, transfer.

(4325) § **21**. No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or disability of a party, the court, on motion or supplemental complaint at any time within one year, or on supplemental complaint afterward, may allow the action to be continued by or against his representative or successor in interest. In case of any transfer of interest, the action shall be continued in the name of the original party; or he court may allow the person to whom the transfer is made to be substituted in the action.

Making new parties

(4326) § **22**. The court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others or by saving their rights; but when a complete determination of the controversy can not be had, without the presence of other parties, the court must cause them to be joined as proper parties. And when, in an action for the recovery of real or personal property, a person not a party to the action, but having having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be made a party by the proper amendment.

Interpleader, notice

(4327) § **23**. A defendant against whom an action is pending upon a contract, or for specific real or personal property, may, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property, or its value, to such person as the court may direct; and the court may, in its discretion, make the order.

New party, notice.

(4328) § **24.** When a party is introduced into an action as a representative or successor of a former party, such new party is entitled to the same notice, to be given in the same manner as required for defendants in the commencement of an action.

Party in action for purchase money, decree.

(4329) § **25.** In any action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not the plaintiff, may be made a party, and the court, in the final judgment, may order the interest of the purchaser to be sold or transferred to the plaintiff upon such terms as may be just; and may also order a specific performance of the contract in favor of the complainant or the purchaser, in case a sale be ordered.

Assignor, when defendant; rule as to set-off, etc.

(4330) § **26.** When any action is brought by the assignee of a claim arising out of a contract, and not assigned by indorsement in writing, the assignor shall be made a defendant, if a resident of the Territory, to answer as to the assignment or his interest in the subject of the action. And all actions by assignees shall be without prejudice to any set-off or other defense existing at the time of or before notice of the assignment, except actions on negotiable promissory notes and bills of exchange, transferred in good-faith and upon good consideration before due.

New party, how brought in by defendant.

(4331) § **27.** When it is necessary for the defendant to bring a new party before the court, he may state the matter relating thereto in his answer, and demand relief; and thereupon a summons shall issue and other proceedings be had against him as if such matter had been exhibited in the original complaint.

ARTICLE 3.—JOINDER OF CAUSES OF ACTION.

SECTION.
1. What causes of actions joined.
2. Action for title papers, reformation, etc.
3. Joinders in matters of contract, separate trial.

What causes of action joined.

(4332) § **1.** The plaintiff may unite several causes of action in the same complaint, when they are included in either of the following classes:

First. Money demands on contract.

Second. Injuries to property.

Third. Injuries to person or character.

Fourth. Claims to recover the possession of personal property, with or without damages for the withholding thereof, and for injuries to the property withheld.

Fifth. Claims to recover the possession of real property, with or without damages, rents and profits for the withholding thereof, and for waste or damage done to the land; to make partition of and to determine and quiet the title to real property.

Sixth. Claims to enforce the specific performance of contracts and to avoid contracts for fraud or mistakes.

Seventh. Claims to forclose mortgages; to enforce or discharge specific liens; to recover personal judgment upon the debt secured by such mortgage or lien; to subject to sale real property upon demands against decedents' estates, when such property has passed

to heirs, devisees, or their assigns; to marshal assets and to substitute one person to the rights of another; and all other causes of action arising out of a contract or a duty, and not falling within either of the foregoing classes. But causes of action so joined must effect all the parties to the action, and not require different places of trial, and must be separately stated and numbered.

Actions for title papers, reformation, etc.

(4333) § **2.** When the plaintiff desires to recover the possession of title papers or other instruments of writing, or correct any mistakes therein, a separate action may be brought therefor; or the possession of such title or papers or other instruments of writing may be recovered, or mistakes corrected in any other action, when such recovery or correction would be essential to a complete remedy.

Joinders in matters of contract, separate trials.

(4334) § **3.** When the action arises out of contract, the plaintiff may join such other matters in his complaint as may be necessary for a complete remedy and a speedy satisfaction of his judgment, although such other matters fall within some other one or more of the foregoing classes. When the several causes of actions are united, belonging to any of the foregoing classes, the court may order separate trials for the furtherance of justice.

ARTICLE 4.—CAUSES OF ACTION THAT SURVIVE.

SECTION.
1. Where actions survive, representative.
2. What actions die, exception.
3. All other actions survive, exception.
4. Action for death of another, limitation.

Where actions survive, representatives.

(4335) § **1.** In all cases where actions survive, they may be commenced by or against the representatives of the deceased to whom the interest in the subject matter of the action has passed.

What actions die, exception.

(4336) § **2.** A cause of action arising out of an injury to the person dies with the person of either party, except in cases in which an action is given for an injury causing the death of any person, and actions for seduction, false imprisonment, and malicious prosecution.

All other actions survive, exception.

(4337) § **3.** All other causes of action survive and may be brought by or against the representatives of the deceased party, except actions for promise to marry.

Action for death of another, limitation.

(4338) § **4.** When the death of one is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter if the former might have maintained an action, had he lived, against the latter for an injury for the same act or omission. The action must be commenced within two years. The damages cannot exceed ten thousand dollars, and must inure to the exclusive benefit of the widow and children, if any, or the next of kin, to be distributed in the same manner as personal property of the deceased.

ARTICLE 5.—SPECIAL CAUSES OF ACTION.

SECTION.
1. Charges of incest, etc., how actionable.
2. Waste, forfeiture and eviction.
3. Waste of trespass; suit by remainder-man.
4. Suit against co-tenant.
5. Nuisance.
6. Who may sue.
7. Nuisance, remedy.

Charges of incest, etc, how actionable.

(4339) § **1**. Every charge of incest, fornication, adultery, or whoredom, falsely made by any person against a female; also words falsely spoken of any person, charging such person with incest, or the infamous crime against nature, whether with mankind or the brute creation, shall be actionable in the same manner as in the case of slanderous words charging a crime, the commission of which would subject the offender to death or other degrading penalties.

Waste, forfeiture and eviction

(4340) § **2**. Wrongs heretofore remediable by action of waste shall be subjects of action, as other wrongs in which there may be judgment for damages, forfeiture of the estate of the party offending and eviction from the premises. Judgment of forfeiture and eviction shall only be given to the person entitled to the reversion against the tenant in possession when the injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenants' estate or unexpired term, or to have been done in malice.

Waste of trespass, suit by remainder man.

(4341) § **3**. A person seized of an estate in remainder or reversion may maintain an action for waste or trespass, for injury to the inheritance, notwithstanding an intervening estate for life or years.

Suit against co-tenant.

(4342) § **4**. A joint tenant, or tenant in common, or tenant in coparcenary, may maintain an action against his co-tenant or co-parcener, or their personal representatives, for receiving more than their just proportion.

Nuisance

(4343) § **5**. Whatever is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action.

Who may sue.

(4344) § **6**. Such action may brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

Nuisance, remedy.

(4345) § **7**. Where a proper case is made, the nuisance may be enjoined or abated and damages recovered therefor.

ARTICLE 6.—ACTIONS, WHERE COMMENCED.

SECTION.
1. Real actions in county where land lies.
2. Actions for penalties, etc., where commenced.
3. Corporations, etc., agency.
4. Wills.
5. Railroads and other carriers.
6. Residents and non residents; assignees.
7. Foreign corporation.

Real actions in county where land lies.

(4346) § **1**. Actions for the following causes must be commenced in the county in which the subject of the action, or some part thereof, is situated:

First. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

Second. For the partition of real property.

Third. For the foreclosure of a mortgage of real property.

Actions for penalties, etc., when commenced.

(4347) § **2.** Actions for the following causes must be commenced in the county where the cause, or some part thereof, arose:

First. For the recovery of a penalty or forfeiture imposed by statute; except when imposed for an offense committed on a lake or river or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river or stream, and opposite to the place where the offense was committed.

Second. Against a public officer or person specially appointed to execute his duties, for an act done by him in virtue of his office; or against a person who, by his command or in his aid, shall do anything touching the duties of such officer.

In all cases enumerated in this and the section immediately preceding it, process may issue to and be served in any county in this Territory.

Corporations, etc., agency.

(4348) § **3.** When a corporation, company or an individual has an office or agency in any county for the transaction of business, any action growing out of or connected with the business of such office may be brought in the county where the office or agency is located at the option of the plaintiff, as though the principal resided therein; and service upon any agent or clerk employed in the office or agency shall be sufficient service upon the principal; or process may be sent to any county, and served upon the principal.

Wills.

(4349) § **4.** An action to establish or set aside a will must be brought in the county in which the will, if valid, ought, according to law, to be proved and recorded.

Railroads and other carriers.

(4350) § **5.** An action against a railroad or canal corporation or company, or owner of a line of stages or coaches, for an injury to person or property upon the railroad, canal, or line of stages or coaches of the defendant, or upon a liability as a carrier, may be brought in any county through or into which such railroad, canal, or line of stages or coaches passes; and the summons may be served in any county in the Territory.

Residents and non-residents; assignees.

(4351) § **6.** In all other cases, the action shall be commenced in the county where the defendants, or one of them, has his usual place of residence. Where there are several defendants residing in different counties, the action may be brought in any county where either defendant resides, and a separate summons may be issued to any other county where the other defendant may be found; and in cases of non-residents, or persons having no permanent residence in the Territory, action may be commenced and process served in any county where they may be found. But any action brought by the assignee of a claim, arising out of contract, whether assigned in writing or by delivery, shall be commenced in

the county where one or more of the parties immediately liable to judgment and execution reside, and not elsewhere.

Foreign corporations.

(4352) § **7.** Actions may be brought against a corporation created by or under the laws of any other state, government, or country, in any court having jurisdiction of the amount demanded, by any person having a cause of action, in any county within the Territory where any property, moneys, credits, or effects belonging or due to the corporation may be found.

ARTICLE 7.—ACTIONS, HOW COMMENCED.

SECTION.		SECTION.	
1.	Filing complaint, summons.	11.	*Lis pendens* record.
2.	Service, guardian *ad litem* for same.	12.	Notice by party, contents, filing
3	Service on corporations.	13.	Attachment or levy, notice and filing by sheriff.
4.	Summons and service, when good.	14.	Index of clerk.
5.	Notice by publication.	15.	Fees of clerk.
6.	Personal service without the Territory, proof.	16.	Satisfaction of lien, costs.
7.	Proceedings when part only are served.	17.	Dismissal of attachment, etc, certificate, fees.
8.	Proceedings against joint debtors not summoned, when.	18.	Failure to file notice, effect.
9	Return of "not found" as to part.	19.	Judgment, liens, not effected.
10	Plaintiff's privilege, when part are served.		

Filing complaint; summons.

(4353) § **1.** A civil action shall be commenced, by filing in the office of the proper clerk a complaint, and causing a summons to issue thereon; and the action shall be deemed to be commenced from the time of issuing the summons; but as to those against whom publication is made, from the time of the first publication. The summons shall be issued by the clerk, under the seal of the court, and directed to the sheriff, and shall notify the defendant of the action commenced, the parties thereto, and the court where pending.

Or the plaintiff may bring his action by serving the defendant with a summons signed by the plaintiff or his attorney, informing the defendant of the name of the plaintiff, and that on or before a day therein named, a petition will be filed in the office of the clerk of the court wherein suit is brought, naming it, and stating generally the cause or causes of action and if the action is for money the amount thereof, and that unless the defendant appear thereto and defend before noon of the second day of the term, naming it, or at such other time as the court may by rule direct, default will be entered against him and judgment be rendered thereon.

The time of filing the petition must be not less than ten days before the first day of the next term of the court. Delivery of such summons to the sheriff or his deputy for services shall be deemed the commencement of the action.

Service, guardian ad litem for same

(4354) § **2.** The summons shall be served, either personally on the defendant, or by leaving a copy thereof at his usual or last place of residence. An acknowledgment on the back of the process, or the voluntary appearance of a defendant, is equivalent to service.

Process against persons of unsound mind shall be served upon the guardian of such persons, if there be a guardian. If no guardian shall have been appointed, then such process shall be served, by copy, upon the superintendent of the hospital in which such persons shall be confined, or upon the person having charge or custody of such person; in which case, upon proof of the insanity of the defendant, the court shall appoint a guardian *ad litem* for such defendant, whose duty it shall be to make proper defense to such action.

Service on corporations.

(4355) § **3.** The process against either a domestic or foreign corporation may be served on the president, presiding officer, mayor, chairman of the board of trustees, or other chief officer or, if its chief officer is not found in the county, then upon its cashier, treasurer, secretary, clerk, general or special agent; or, if it is a municipal corporation, upon its marshal; or, if it is an incorporated library company, upon its librarian; if none of the aforesaid officers can be found, then upon any person authorized to transact business in the name of such corporation and if no such person, officer, or agent be found in the county where suit is pending, process may be sent, for service, to any other county in the Territory where such person, officer, or agent may be found: *Provided, however*, That process shall not be served upon any such person, officer, or agent when he is plaintiff in the suit, but, in such cases, process shall be served upon some other such person, officer, or agent of the corporation than such plaintiff; and in case the defendant be a foreign corporation, having no such person, officer, or agent resident in the Territory, service may be made in the same manner as against other non-residents.

Summons and service, when good.

(4356) § **4.** No summons, or the service thereof, shall be set aside, or be adjudged insufficient, where there is sufficient substance about either to inform the party on whom it may be served that there is an action instituted against him in court, the name of the plaintiff and the court, and the time when he is required to appear.

Notice by publication.

(4357) § **5.** The clerk, by order of the court if in session, or in vacation without such order, shall cause a notice of the pendency of such action, and the term at which the same will stand for trial, to be published for three weeks successively in some newspaper of general circulation named by the plaintiff or his attorney, printed in the English language, and published in the county, or if none be published or printed therein, then in the county in this Territory nearest thereto in which any such paper may be printed in either of the following cases shown by affidavit:

First. Where the defendant is a foreign corporation, and has property wherein the Territory, or the cause of action arose therein.

Second. Where the defendant, being a resident of this Territory, has departed therefrom, with intent to defraud his creditors, or to avoid the service of the summons, or keeps himself concealed therein, with a like intent.

Third. Where the defendant is not a resident of this Territory and the cause of action is founded upon or connected with a con-

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tract; or arises from a duty imposed by law in relation to rea estate in this Territory, or the object of the action is to enforce or discharge a lien; or to obtain a divorce; or to try and determine or quiet the title to, or possession of real estate or any interest therein; or to enforce the collection of any demand by proceedings in guarnishment or attachment.

Fourth. Where the residence of any defendant, upon diligent inquiry, is unknown.

Fifth. Where the name of any defendant is unkonwn, and he is believed to be a non-resident.

Personal service without the territory, proof

(4358) § **6.** When the defendant is a non-resident, personal service of the summons out of the Territory is equivalent to publication; and such service may be proved by the affidavit of a competent person, made before any officer authorized to administer oaths; which affidavit shall state the time and place and mode of giving the notice, and set forth that the person thus served with notice is the identical person named in the action or proceeding; or the identify of the person may be proved by the affidavit of the plaintiff or any other person.

Proceedings when part only are served.

(4359) § **7.** Where the action is against two or more defendants, and the service is served on one or more, but not all of them, the plaintiff may proceed as follows:

First. If the action be against defendants jointly indebted on contract, he may proceed against the defendant served; and if he recover judgment it may be enforced against the joint property of all and the separate property of the defendant served.

Second. If the action be against defendant severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants, and may afterward proceed against those not served.

Third. If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants, if the action had been against them, or any of them alone.

Proceedings against joint debtors not summoned, when.

(4360) § **8.** In all cases where judgment has heretofore been, or shall hereafter be, recovered against one or more persons jointly liable on contract, but such judgment has been, or shall be, rendered only against part of the persons liable, for the reason that the others were not summoned and did not appear, the plaintiff may proceed against those not summoned and who did not appear, in the same manner as if they were alone liable, but the complaint must allege the facts aforesaid.

Return of "not found" as to part.

(4361) § **9.** When there is a return of "not found," as to any of the defendants, such return shall be suggested on the record, and the plaintiff may continue the cause, as to them, for another summons, at his option; and he may, in either case, proceed against the defendants served in time.

Plaintiff's privilege when part are served

(4362) § **10.** When the summons has been served in due time on part only of the defendants, the plaintiff may dismiss, or continue for further proceedings, his action as to those not summoned,

or not summoned in time, and proceed to trial as to the others, or continue as to all of them, at his option.

Lis pendens record.

(4363) § **11**. There shall be kept in the office of the clerk of the several district courts of this Territory a book to be called the "Lis Pendens Record," which shall be a public record.

Notice by party, contents, filing.

(4364) § **12**. Whenever any person shall have commenced a suit, whether by complaint as plaintiff, or by cross complaint as defendant, to enforce any lien upon, right to, or interest in, any real estate, upon any claim not founded upon an instrument executed by the party having the legal title to such real estate, as appears from the proper records of such county, and recorded as by law required; or not founded upon a judgment of record in the county wherein such real estate is situated, against the party having the legal title to such real estate, as appears from such proper records. It shall be the duty of such person to file with the clerk of the district court in each county where the real estate sought to be effected is situated, a written notice containing the title of the court, the names of all the parties to such suit, a description of the real estate to be affected, and the nature of the lien, right, or interest sought to be enforced against the same; which notice shall, upon the payment of the proper fees, be immediately recorded in said "Lis Pendens Record" by the clerk, who shall note upon the record the day and hour when said notice was filed and recorded.

Attachment or levy; notice and filing by sheriff.

(4365) § **13**. Whenever any sheriff or coroner of any county in this Territory shall seize upon any real estate or interest therein, by virtue of any writ of attachment, or shall levy upon any such real estate or interest therein, by virtue of any execution issued to him from any court other than a court of the county in which he is sheriff or coroner, he shall, at the time of making the seizure or levy, file with the clerk of the district court of his county a written notice, setting forth the names of the parties to the proceedings upon which the written attachment or execution is founded, and recorded as provided for in the preceding section of this act; and such sheriff or coroner shall state in his return to the attachment or execution, that such notice has been filed, and he shall be allowed a fee of fifty cents, to be taxed as costs: *Provided*, That such sheriff or coroner shall not be required to file such notice until the attachment or execution-plaintiff shall have furnished the money to pay the clerk for filing and recording the same

Index of clerk.

(4366) § **14**. It shall be the duty of the several clerks, upon filing and recording the notices herein provided, to index the same in the name of the several parties whose interest in such real estate is sought to be affected by such suits, attachments, or executions, the plaintiff versus the names of all the defendants, and such defendant whose real estate is sought to be affected at the suit of the plaintiff.

Fees of clerk.

(4367) § **15**. The clerk shall receive twenty-five cents for filing, recording, and indexing each notice required by this act, to be paid by the person filing the same; and the further sum of fifteen cents for entering satisfaction of the lien, right, or claimed interest, as hereinafter provided

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Satisfaction of lien, costs.

(4368) § **16**. Upon the final determination of any suit, brought for the purposes in section seventy-seven specified, adversely to the party seeking to enforce a lien upon, right to, or interest in, such real estate, it shall be the duty of the court rendering the judgment to order the proper clerk to enter in said "Lis Pendens Record" a satisfaction of the lien, right or interest sought to be enforced against said real estate; and upon such entry being made, said real estate shall be forever discharged therefrom, and the costs for entering such satisfaction shall be taxed as a part of the costs in the case.

Dismissal of attachment, etc., certificate, fee

(4369) § **17**. Whenever any such attachment shall be dismissed, or the judgment rendered thereon shall be satisfied, or such execution shall be satisfied without a sale of such lands so seized or levied upon as aforesaid, or upon a redemption of such real estate within the time allowed by law, after a sale thereof upon execution, it shall be the duty of the clerk of the proper court, from which such attachment or execution was issued, upon a payment of a fee of fifty cents by the owner of such real estate, to make a certificate of such dismissal or satisfaction, to be entered upon the "Lis Pendens Record," if the same is in his office, or to be recorded in the "Lis Pendens Record" of the proper county where such real estate is situated; and upon such certificate being entered or recorded, such real estate shall be discharged from the lien of such attachment or execution.

Failure to file notice, effect

(4370) § **18**. Until the proper notices required by this act have been filed with the proper clerk, the bringing of suits for the purposes mentioned in section seventy-seven and the seizure of real estate under attachments, and the levy thereon under execution, in the cases mentioned in section seventy-eight, shall not operate as constructive notice of the pendancy of such suits, or of the seizure of or levy upon such real estate, nor have any force or effect as against *bona fide* purchasers or incumbrancers of the same.

Judgment liens not effected.

(4371) § **19**. Nothing in this act shall be construed to impair the lien of judgments of the several courts of record of this Territory upon the real estate of defendants in the county where such judgments are rendered, or transcripts thereof filed and recorded as now required by law.

ARTICLE 8.—ACTIONS, WHEN DISMISSED.

SECTION.		SECTION.	
1.	Action dismissed when.	2.	Dismissal in vacation, costs.

Action dismissed, when.

(4372) § **1**. An action may be dismissed without prejudice.

First. By the plaintiff before the jury retires; or, when the trial is by court, at any time by the finding of the court is announced.

Second. By the court where the plaintiff fails to appear on the trial.

Third. By the court, on the refusal to make the necessary parties, after having been ordered by the court.

Fourth. By the court on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.

Fifth. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action.

In all other cases, upon the trial, the decision must be upon the merits.

Dismissal in vacation, costs.

(4373) § **2.** The plaintiff may dismiss his action in vacation. by filing with the clerk a writing to that effect. The clerk shall enter such written dismissal in the order book, and the court shall enter judgment accordingly to the next term. The plaintiff shall not be liable to the defendant for any costs made by him after notice of dismissal.

ARTICLE 9.—PLEADINGS.

SECTION.
1. Definition.
2. Distinct forms abolished.
3 What allowed.
4. Complaint, contents, paragraphs numbered
5. Demurrer; causes therefor.
6. Demurrer sustained for misjoinder, proceeding.
7 Misjoinder not ground for dismissal.
8 Pleading over; amendment; terms.
9. Objection by answer when.
10. Demurrer to part, answer to residue.
11. Demurrer overruled, judgment.
12. Demurrer to answer.
13. Answer, contents; paragraph numbered.
14 Set off.
15 Principal and surety; set-off.
16. Counter-claim.
17 Omission to plead counter claim, effect.
18 Cross-demands; effect of assignment or death
19 Set-off or counter-claim; right of defendant.
20 Answer, joint or several.
21 Answer by guardian or committee.
22 Defenses except general denial, special.
23. Reply, demurrer thereto, paragraphs numbered.
24 Pleadings subscribed.
25. Interrogatories to parties; continuance.
26 Verified pleadings not proof, exceptions.
27 Excuse pleaded, when a denial.
28 When instrument or copy must be filed.
29 Bill of particulars, abstract of titles
30 Proof of execution of instruments; verified plea, exception.
31 Dilatory pleas verified, answers and issue in abatement
32. Failure of consideration, exception.
33. Pleading set-off or payment, though barred.
34. Averment of demand at place, when unnecessary.
35. Judgment of court of special jurisdiction, proof.
36 Condition precedent, proof.
37. Private statute.
38. Libel or slander; defamatory matter.
39. Justification and mitigation, evidence.
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42. Liberal construction; indefiniteness, how corrected.
43. Evidence under general denial,
44. Fictions abolished
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46. Copy of pleading for adverse party, rule.
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49 Allegations, when taken as true.
50. Damages, when recoverable.
51. Relief, extent of.
52. When party constructively summoned may defend.
53. Complaint must be proved.
54. Plaintiff may be examined.
55. Adjustment of set-off, or counter-claim
56. No personal judgment.
57. Variance immaterial, unless party misled.
58. Variance immaterial, action of court.
59. Failure of proof.
60. Amendment, delay thereby, affidavit.
61 Contents of affidavit; pleadings, when filed.
62. Names of parties, pleadings corrected; relief from judgment.
63. Name of defendant.
64. Judgment not reversed for technical error
65. Supplemental pleadings.

Definition

(4374) § **4.** The pleadings are formal allegations of the parties of their respective claims and defenses, for the judgment of the court.

Distinct forms abolished

(4375) § **2**. All the distinct forms of pleading heretofore existing, inconsistent with the provisions of this act, are hereby abolished; and hereafter the forms of pleadings in civil actions in courts of record, and the rules by which the sufficiency of the pleadings is to be determined, are modified as prescribed by this act.

What allowed.

(4376) § **3**. The only pleadings allowed are:

First. The complaint by the plaintiff.

Second. Demurrer and answer by the defendant.

Third. The demurrer and reply by the plaintiff.

Fourth. Demurrer to the reply.

Complaint, contents, paragraphs numbered.

(4377) § **4**. The first pleading on the part of the plaintiff is the complaint.

The complaint shall contain:

First. The title of the cause, specifying the name of the court and the county in which the action is brought and the names of the parties to the action, plaintiff and defendant.

Second. A statement of the facts constituting the cause of action in plain and concise language, without repitition and, in such manner as to enable a person of common understanding to know what is intended.

Third. Where the complaint contains more than one cause of action, each shall be distinctly stated in a separate paragraph and numbered.

Fourth. A demand of the relief to which the plaintiff may suppose himself to be entitled.

If the recovery of money be demanded the amount thereof shall be stated.

Demurrer, cause therefor.

(4378) § **5**. The defendant may demur to the complaint when it appears upon the fact thereof, either;

First. That the court has no jurisdiction of the person of the defendant or the subject of the action.

Second, That the plaintiff has not legal capacity to sue.

Third. That there is another action pending between the same parties for the same cause.

Fourth, That there is a defect of parties, plaintiff or defendant.

Fifth. That the complaint does not state facts sufficient to constitute a cause of action.

Sixth. That several causes of action have been improperly joined and for no other cause shall a demurrer be sustained.

Seventh. When it appears on the face of the petition that the cause of action is barred by statute of limitation.

Demurrer sustained for misjoiner, proceedings.

(4379) § **6**. Where a demurrer is sustained on the ground of several causes of action being improperly joined in the same complaint, the court shall order the misjoinder to be noted on the order book and cause as many separate actions to be docketed between the parties as there are causes decided by the court to be improperly joined, and each shall stand as a separate action. And the plaintiff shall thereupon file a complaint in each of the above cases to which the defendant shall enter his appearance and plead

and go to trial, or suffer a default, in the same manner as in the original action.

Misjoiner not ground for reversal.

(4380) § **7.** No judgment shall ever be reversed for any error committed in sustaining or overruling a demurrer for misjoinder of causes of action.

Pleading over amendment, terms.

(4381) § **8.** If the court sustain or overrule a demurrer the party affected by such ruling may plead over or amend, upon such terms as the court may direct, and on payment of costs occasioned by the demurrer.

Objection by answer, when.

(4382) § **9.** Where any of the matters enumerated in section ninety does not appear upon the face of the complaint, the objection (except for misjoinder of causes) may be taken by answer. If no objection is taken, either by demurrer or answer, the defendants shall be deemed to have waived the same, except only the objection to the jurisdiction of the court over the subject of the action, and except the objection that the complaint does not state facts sufficient to constitute a cause of action: *Provided, however*, That the objection that the action was brought in the wrong county, if not taken by answer or demurrer, shall be deemed to have been waived.

Demurrer to part, answer to residue.

(4383) § **10.** The defendant may demur to one or more of the several causes of action alleged in a complaint and answer as to the residue.

Demurrer overruled; judgment.

(4384) § **11.** The judgment upon overruling a demurrer shall be that the party shall plead over; and the answer or reply shall not be deemed to overrule the objection taken by demurrer. But no objection taken by demurrer and overruled shall be sufficient to reverse the judgment, if it appear from the whole record that the merits of the case have been fairly determined. If a party fail to plead after the demurrer is overruled judgment shall be rendered against him as upon a default.

Demurrer to answer.

(4385) § **12.** Where the facts stated in any paragraph of the answer are not sufficient to constitute a cause of defense, the plaintiff, may demur to it under the rules prescribed for demurring to complaint.

(4386) § **13.** The answer shall contain:

Answer, contents, paragraphs numbered

First. A denial of each allegation of the complaint controverted by the defendant.

Second. A statement of any new matter constituting a defense, counter-claim, or set-off, in plain and concise language.

Third. The defendant may set forth in his answer as many grounds of defense, counter-claim, and set-off, whether legal or equitable, as he shall have. Each shall be distinctly stated in a separate paragraph, and numbered, and clearly refer to the cause of action intended to be answered.

Set-off.

(4387) § **14.** A set-off shall be allowed only in actions for money demands upon contract, and must consist of matter arising out of debt, duty, or contract, liquidated or not, held by the defendant at the time the suit was commenced, and matured at or before the time it is offered as a set-off.

Principal and surety; set-off.

(4388) § **15.** In all actions upon a note or other contract against several defendants, any one of whom is principal and the

others sureties therein, any claim upon contract in favor of the principal defendant, and against the plaintiff, or any former holder of the note or other contract, may be pleaded as a set-off by the principal or any other defendant.

Counter-claim.

(4389) § **16.** A counter-claim is a matter arising out of or connected with a cause of action which might by the subject of an action in favor of the defendant, or of which would tend to reduce the plaintiff's claim or demand for damages.

Omission to plead counter-claim, effect

(4390) § **17.** If any defendant personally served with notice omit to set up a counter-claim arising out of the contract, or transaction set forth in the complaint as the ground of the plaintiff's claims, or any of them, he can not afterwards maintain an action against the plaintiff therefor, except at his own cost.

Cross demands, effect of assignment or death.

(4391) § **18.** When cross demands have existed between persons, under such circumstances that one could be pleaded as a counter claim or set-off to an action brought upon the other, neither can be deprived of the benefit thereof by the assignment or death of the other and the two demands must be deemed compensated so far as they equal each other.

Set-off or counter-claim, right of defendant.

(4392) § **19.** In any case where a set-off or counter claim has been presented, which in another action would entitle the defendant to a judgment against the plaintiff, the defendant shall have right of proceeding to the trial of his claim without notice although the plaintiff may have dismissed his action or failed to appear.

Answers, joint or several.

(4393) § **20.** Several defendants may answer jointly or severally, as the facts set forth in the complaint may require.

Answer by guardian or committee.

(4394) § **21.** It shall be the duty of the guardian of an infant, or the committee of a person of unsound mind, or attorney appointed for a prisoner, to file an answer denying the material allegations of the complaint prejudicial to such defendant without oath.

Defenses general denial, special.

(4395) § **22.** All defenses, except the mere denial of the facts alleged by the plaintiff, shall be pleaded specially.

Reply, demurrer thereto; paragraphs numbered

(4396) § **23.** When any paragraph of the answer contains new matter, the plaintiff may reply to it by a general denial; and may also, in separate paragraphs, reply any new matter which supports the complaint and avoids the new matter in such paragraph of the answer. The defendant may demur to any paragraph of the reply, on the ground that the facts stated therein are not sufficient to avoid the paragraph of answer, or, if the answer be a set-off or counter claim, any part thereof. The paragraphs of the reply, like the answer shall be severally numbered, and each shall plainly refer to the paragraph of the answer to which it is addressed. The pleadings to a counter claim shall be an answer by the defendant thereto, and a reply to new matter in the answer with the right to demur to any of them, as if the counter claim were an original complaint.

Pleadings subscribed.

(4397) § **24.** Every pleading of fact in a court of record must be subscribed by the party or his attorney, and verified by the party, his agent or attorney.

Interrogatories to parties; continuance.

(4398) § **25**. Either party may propound interrogatories, to be filed with the pleadings relevant to the matter in controversy, and require the opposite party to answer the same under oath. And corporations, through their proper officers, agent, or agents, shall be required to answer interrogatories as natural persons. All interrogatories must be answered within the time limited by the court or judge, positively and without evasion, and the court may enforce the answer by attachment or otherwise; and the party may, in addition thereto, set forth in his answer, all the relevant matter in avoidance. The answer to the interrogatories may be used on the trial or not, at the option of the party requiring it: *Provided, however*, That in the absence of such opposite party, the filing of the interrogatories shall not work a continuance of the cause unless it be shown to the court, by affidavit, that the party who files such interrogatores expects to elicit facts by the answer, material to him on the trial; that he believes such facts to be true; that he can not prove the same by any witness; and that he files the interrogatories not for delay merely, but to obtain substantial justice at the trial.

When a party filing interrogatories shall also file an affidavit that he verily believes the subject of the interrogatories, or any of them is in the personal knowledge of the opposite party interrogated, and that the answers thereto, if truthfully made from such knowledge will sustain the claim or defense as the case may be, or any part thereof, and if the opposite party shall fail to answer, within the time allowed, or extended by the court therefor, the claim or defense, or the part thereof, according to such affidavit, shall de deemed to be sustained, and judgment be given accordingly.

Verified pleadings not proof, exception.

(4399) § **26**. Pleadings sworn to by either party in the case shall not, on the trial, be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party than those not sworn to, except as herein or otherwise by law provided.

Excuse pleaded, when denial.

(4400) § **27**. When the pleadings show sufficient excuse for not admitting or denying allegation, such excuse operates as a denial of the truth of the allegation and to require its proof.

When instrument or copy must be filed.

(4401) § **28**. When any pleading is founded on a written instrument or on account, the original, or a copy thereof, must be filed with the pleading. A set-off or a counter-claim is within the meaning of this section. Such copy of a written instrument, when copied in the pleadings, shall be taken as a part of the record. The account, if the items are numerous, shall not be copied in the pleadings nor be deemed to be any part of the record, unless by order of the court. Any variance between the pleadings and copy of a written instrument filed, as to matter of description or legal effect, may be amended at any time (as of course) before judgment without causing a continuance.

Bill of particulars.

(4402) § **29**. The court on motion, may order a further bill of particulurs, when the one filed is defective; and may, in all proper cases upon motion, order a bill of particulars of the claim of either party, and abstracts of title to be furnished.

Proof of execution of instrument, verified plea, exception.

(4403) § **30**. Where a pleading is founded on a written instrument, or such instrument is therein referred to; when an assignment, in writing, of such instrument is specially alleged in a pleading, such instrument or assigement may be read in evidence on the trial of the cause without proving its execution, unless its execution be denied by pleading under oath, or by an affidavit filed with the pleading denying the execution. And when a written instrument or assignment is so pleaded or referred to proof of the names of the makers, assignors, obligors, assignees, payees, or obligees, shall not be necessary uuless the same shall be denied by pleading under oath, or by affidavit filed as aforesaid. The oath in case that the time of assignment is questioned, shall be that the party has reason to believe, and does believe, that the assignment was not made before the suit was commenced, but the executors, administrators, or guardians need not deny the execution of an instrument, or the assignment thereof, under oath, but the same must be proved as if it were so denied. The party shall in all cases be entitled to an inspection of the instrument in writing, before pleading thereto.

Dilatory pleas verified, answers and issue in abatement.

(4404) § **31.** Pleadings denying the jurisdiction of the court, or in abatement of the action, and all dilatory pleadings, must be supported by affidavit. The character or capacity in which a party sues or is sued, and authority by virtue of which he sues, shall require no proof on the trial of the cause, unless such character, capacity or authority, be denied by a pleading under oath, or by an affidavit filed therewith. An answer in abatement must precede, and can not be pleaded with an answer in bar, and the issue thereon must be tried first and separately. If the issue be found against the answer, the judgment must be that the party plead over and against him for all costs of the action up to that time.

Failure of consideration, exception.

(4405) § **32**. A failure or want of consideration, in whole or in part, may be pleaded to any action, set-off, or counter-claim upon or arising out of any specialty bond or deed, except instruments negotiable by the law merchant, and negotiated before the falling due.

Pleading set-off or payment, though barred.

(4406) § **33.** A party to any action may plead or reply a set-off or payment to the amount of any cause of action or defense, notwithstanding such set-off or payment is barred by the statute: *Provided*, It was not barred at the time the cause of action arose.

Averment of demand at place when unnecessary.

(4407) § **34**. In any action or defense, founded upon a bill or note, or other contract for the payment of money at a particulur place,it shall not be necessary to aver or prove a demand at the place, but the opposite party may show a readiness to pay such demand at the proper place.

Judgment of court of special jurisdiction, proof.

(4408) § **35**. In pleading a judgment or decision of a court or officer of special jurisdiction, it shall be sufficient to allege, generally that the judgment or decision was duly given or made. If the allegation be denied, the facts conferring jurisdiction must be proved on the trial.

Condition precedent, proof.

(4409) § **36**. In pleading the performance of a condition precedent in a contract, it shall be sufficent to allege, generally, that the party performed all the conditions on his part. If the allega-

tions be denied, the facts showing a performance must be proved on the trial.

Private statute.

(4410) § **37**. In pleading a private statute or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its approval, and the court shall take judicial notice thereof.

Libel or slander, defamatory matter.

(4411) § **38**. In an action for libel or slander it shall be sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff; and if the allegation be denied, the plaintiff must prove, on the trial, the facts, showing that the defamitory matter was published or spoken of him.

Justification and mitigation, evidence.

(4412) § **39**. In all actions mentioned in the last section, the defendant may allege the truth of the matter charged as defamitory and mitigating circumstances to reduce the damages, and give either or both in evidence.

Presumption; matters of judicial notice.

(4413) § **40**. Neither presumptions of law nor matters of which judicial notice is taken need be stated in a pleading.

Property distrained, sufficient answer.

(4414) § **41**. In an action to recover the possession of property distrained doing damage, an answer that the defendant, or person by whose command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good, without setting forth the title of such real property.

Liberal construction; indefiniteness, how corrected.

(4415) § **42**. In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties; but when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

Evidence under general denial

(4416) § **43**. Under a mere denial of any allegation, no evidence shall be introduced which does not tend to negative what the party making the allegation is bound to prove.

Fictions abolished.

(4417) § **44**. All fictions in pleading are abolished, and their use forbidden in the courts of justice in this Territory.

Paper lost or withheld, copy used.

(4418) § **45**. If an original pleading or paper be lost or withheld by any person, the court may authorize a copy thereof to be filed and instead of the original.

Copy of pleadings for adverse party, rule.

(4419) § **46**. The court may, by rule, require that when the complaint, answer or reply in any cause is filed, the party filing the same shall also file one copy thereof for the use of the opposite party, but no copy of any exhibit need be filed; and for the filing of which copy no fee shall be taxed by the clerk.

Case numbers continuous.

(4420) § **47**. Each case, when it is filed and entered, shall be numbered; and thereafter, in all its stages in the same court, and upon every docket and the book; such cause, and all the papers and exhibits filed therein, shall bear the same number as when first filed.

Sham pleadings.

(4421) § **48**. An answer or other pleading shall be rejected as sham, either when it plainly appears upon the face thereof to be false in fact, and intended merely for delay, or when shown to be so by the answers of the party to special written interrogator-

ies propounded to him to ascertain whether the pleading is false; and all surplusages, tautology, and irrelevant matter shall be set aside and struck out of any pleading, when pointed out by the party aggrieved.

Allegations, when taken as true.

(4422) § **49**. Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply shall for the purpose of the action be taken as true but the allegations of new matter in a reply are to be deemed controverted by the adverse party as upon a direct denial or avoidance as the case may require. Allegations of value or amount of damages shall not be considered as true by the failure to controvert them; but in actions upon account, in which an itemized bill of particulars, the correctness of which is duly affirmed or sworn to by the plaintiff, or some one in his behalf has been filed with the complaint a default by the defendant shall be deemed to admit the correctness of the bill of particulars, as sworn or affirmed to and judgment may be rendered thereon without further evidence.

Damages, when recoverable

(4423) § **50.** Whenever damages are recoverable, the plaintiff may claim and recover, if he show himself entitled thereto, any damages which he might have heretofore recovered for the same cause of action.

Relief, extent of.

(4424) § **51.** The relief granted to the plaintiff, if there be no answer, cannot exceed the relief demanded in his complaint; but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

When party constructively summoned may defend.

(4425) § **52**. A defendant constructively summoned shall be allowed, at any time before judgment, to appear and defend the action; and upon a substantial defense being disclosed, time may be given on reasonable terms, to prepare for trial.

Complaint must be proved.

(4426) § **53**. The statements of a complaint against a defendant constructively summoned, and who has not appeared, except such as are for his benefit, shall not be taken as true, but shall be established by proof.

Plaintiff may be examined.

(4427) § **54**. Before rendering judgment against a defendant constructively summoned, and who has not appeared, the court may cause the plaintiff to appear personally in court, or before a commissioner and answer, under oath, interrogatories concerning the matters in the complaint, or any matters which might be set up in defense thereto, including matters of set-off and counter-claim, and may order the examination to be reduced to writing, and filed with the papers of the action.

Adjustment of set-off or counter-claim.

(4428) § **55**. If upon the examination provided in the last section, any matters of set-off or counter-claim are disclosed, the same may be adjusted by the judgment.

No personal judgment

(4429) § **56**. No personal judgment shall be rendered against a defendant constructively summoned, who has not appeared in the action.

Variance immaterial, unless party misled

(4430) § **57**. No variance between the allegations in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action

or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be proved to the satisfaction of the court and it must be shown in what respect he has been misled; and thereupon the court may order the pleading to be amended on such terms as may be just not exceeding costs caused by such amendment.

Variance immaterial, action of court.

(4431) § **58**. Where the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

Failure of proof.

(4432) § **59**. When, however, the allegation of the claim or defense to which the proof is directed is unproved, not in some particular only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

Amendment, delay thereby, affidavit

(4433) § **60**. Any pleading may be amended by either party, of course, at any time, before the pleading is answered. All other amendments shall be by leave of the court. The party amending shall pay the costs of the leave to amend. When the trial is not delayed by reason of the amendment, no other costs shall be taxed. When the amendment causes a delay during any part of the term, or to another term, the party amending shall pay the costs of such delay. No cause shall be delayed by reason of an amendment, excepting only the time to made up issues, but upon good cause shown by affidavit of the party or his attorney asking such delay.

Contents of affidavit, pleadings filed.

(4434) § **61**. The affidavit shall show distinctly in what respect the party asking for the delay has been prejudiced in his preparation for trial by the amendment. When the action is continued for such cause, the party asking the delay shall file his pleadings at such time as the court may direct.

Names of parties, pleadings corrected, relief, judgment.

(4435) § **62**. The court may, at any time, in its discretion, and upon such terms as may be deemed proper for the furtherance of justice, direct the name of any party to be added or struck out; a mistake in name, description, or legal effect, or in any other respect, to be corrected; any material allegation to be inserted, struck out or modified, to conform the pleadings to the facts proved, when the amendment does not substantially change the claim or defense. The court may also, in its discretion, allow a party to file his pleadings after the time limited therefor; and shall relieve a party from a judgment taken a against him, through his mistake, inadvertance, surprise, or excusable neglect, and supply an omission in any proceedings, on complaint or motion filed within two years.

Name of defendant.

(4436) § **63**. When the plaintiff is ignorant of the name of the defendant such a defendant may be designated in any pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly, either before or after service of the summons.

Judgment not reversed for technical error.

(4437) § **64**. The court must in every stage of the action, disregard any error or defect in the pleadings which does not affect the substantial rights of the adverse party; and no judgment can

be reversed or effected by reason of such error or defect, not exceeding the costs caused by such amendment.

Supplemental pleadings.

(4438) § **65.** The court may on motion allow supplemental pleadings, showing facts which occurred after the former pleadings were filed.

ARTICLE 10.—FORMATION AND ORDER OF ISSUES.

SECTION.
1. Calling of causes; completing issues.
2. Judgment on failure to plead, exception.
3. Entry docket of clerk.
4. Issues of fact, when tried, damages assessed.
5. Docket entries.
6. Judge to arrange order of business.

Calling of causes; completing issues

(4439) § **1.** On the second, and each succeeding day of the term, the court shall call as many of the causes which stand for trial at such term, for issues, as the business of the court will permit; the court shall call the causes in the order they stand on the docket, and shall compel the parties to file their respective pleadings and answers to interrogatories, at such time as the court shall deem just, in no case allowing unreasonable delay; and the pleadings shall be completed at an early day of the term.

Judgment on failure to plead, exceptions

(4440) § **2.** If, from any cause, either party shall fail to plead or make up the issues within the time prescribed, the court shall forthwith enter judgment as upon a default, unless, for good cause shown, further time be given, on the payment of the costs occasioned by the delay.

Entry-docket of clerk.

(4441) § **3.** The clerk shall keep an entry-docket, wherein he shall enter all actions in the order in which they are brought, and the date of issuing the process and the date of the judgment. Within three weeks after the adjournment of the court he shall make out an issue-docket for all actions then pending, and shall docket therein all cases which may be commenced previous to the first day of the next term, in their order, and furnish a copy of the same for the use of the court.

Issues of fact, when tried, damages assessed.

(4442) § **4.** The trial of any issue of fact shall be on or after the day on which the cause is set on the docket, unless otherwise agreed by the parties. The assessment of damages, in case of default, shall be on or after the day on which the default is taken.

Docket entries.

(4443) § **5.** The entry on the docket shall show whether or not the summons has been fully served or notice given in due time for trial, and whether or not the issues have been formed.

Judge to arrange order of business.

(4444) § **6.** The district judges of this Territory, shall have power, and it is hereby made their duty, by proper order, to arrange and regulate the order of business in their respective districts; and in making such order they shall provide:

First. For making up of issues.

Second. For the trial of criminal cases.

Third. For the trial of civil cases.

ARTICLE 11.—ISSUES.

SECTION.
1. Issues, two kinds.
2. Issues of law.
3. Issues of fact.
4. Causes, how tried, distinction.

(4445) § **1.** Issues arise on the pleadings, where a fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds. Issues, two kinds.

First. Of law.

Second. Of fact.

(4446) § **2.** An issue of law arises upon demurrer to the complaint, answer, or reply, or to some part thereof. Issues of law.

(4447) § **3.** An issue of fact arises: Issues of fact.

First. Upon a material allegation in the complaint, denied by the answer.

Second. Upon a material new matter in the answer, denied by the reply.

Third. Upon material new matter in the reply, which shall be considered as controverted by the opposite party without further pleading.

(4448) § **4.** Issues of law and issues of fact in causes that are of exclusive equitable jurisdiction, shall be tried by the court; issues of fact in all other causes shall be triable by jury. In case of the joinder of causes of action or defenses which, formerly, were of exclusive equitable jurisdiction, with causes of action or defenses which were designated as actions at law and triable by jury, the former shall be triable by the court, and the latter by a jury, unless waived; the trial of both may be at the same time or at different times, as the court may direct: *Provided*, That in all cases triable by the court as above directed, the court, in its discretion, for its information, may cause any question of fact to be tried by jury, or the court may refer any such cause to a referee, for hearing and report. Causes, how tried, distinction.

ARTICLE 12.—CONTINUANCES.

SECTION.
1 Continuance on affidavit.
2. Continuance by court, proviso.

(4449) § **1.** A motion to postpone the trial on account of the absence of evidence can be made only upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to obtain it, and where the evidence may be, and if it is for an absent witness the affidavit must show the name and residence of the witness, if known, and the probability of procuring the testimony within a reasonable time, and that his absence has not been procured by the act or connivance of the party, nor by others at his request, nor with his knowledge and consent, and what facts he believes the witness will testify to, and that he believes them to be true, and that he is unable to prove such facts by any other witness whose testimony can be as readily procured. If, thereupon, the adverse Continuance on affidavit.

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party will consent that, on the trial, the fact shall be taken as true, if the absent evidence is written or documentry, and, in case of a witness, that he will testify to said facts as true, the trial shall not be postponed for that cause, and, in such case, the party against whom such evidence is used, shall have the right to impeach such absent witness, as in case where the witness is present or his deposition is used.

Continuance by court, proviso.

(4450) § **2.** Any court, for good cause shown, may continue any action at any stage of the proceedings, at the cost of the applicant, to be paid as the court shall direct: *Provided*, That if, by reason of an amendment to the pleadings, a party who would otherwise be ready for trial be compelled to obtain a continuance, it shall be at the costs of the party making the amendment.

ARTICLE 13.—CHANGE OF VENUE.

SECTION.
1. Causes for.
2. Change from county, costs; one change.
3. Payment to county of expense of trial.
4. No change in vacation, exception.

Causes for.

(4451) § **1.** The court in term, or the judge, thereof in vacation, shall change the venue of any civil action upon the application of either party, made upon affidavit showing one or more of the following causes:

First. That the judge has been engaged as counsel in the cause prior to his election or appointment as judge, or is otherwise interested in the cause.

Second. That the judge is of kin to either party.

Third. That the opposite party has an undue influence over the citizens of the county, or that an odium attaches to the applicant, or to his cause of action or defense, on account of local predjudice.

Fourth. When the county is a party to the suit.

Fifth. Showing to the satisfaction of the court that the convenience of the witnesses and the ends of justice would be promoted by the change.

Sixth. That the judge of the court wherein such action is pending, is a material witness for the party applying for such change.

Seventh. When either party shall make and file an affidavit of the bias, predjudice, or interest of the judge before whom the said cause is pending.

Change from county, costs, one change.

(4452) § **2.** When a change of venue is directed for any of the causes mentioned in the third, fourth and fifth specifications of the preceping section, the court or judge shall designate the county to which the venue shall be changed (which may be in the same or in an adjoining district, as may be deemed best for the furtherance of justice), and shall prescribe the time within which the appellant shall pay the costs of the change; and the clerk of the court in which the suit is pending, as soon as the costs are paid, shall forthwith transmit all the papers and transcript of all the proceedings to the clerk of the court of the county to which

venue is changed; and the clerk of the proper court shall receive the papers and transcript, giving a receipt therefor, and docket the action in its order among the other causes of the court; and the action shall stand for trial at the first term, and shall be tried or otherwise be disposed of in the same manner as if the cause had originated in that court. If the party fail to pay the costs of the change within the time prescribed by the court, he shall be taxed with all the costs made in the case up to the time of such failure, and shall not be entitled to a change of venue from the county. Only one change of venue shall be granted to the same party from the county, and only one from the judge.

Payment to county of expenses of trial.

(4453) § **3**. In all cases, where there has been or shall be a change of venue from one county to another, the county from which the change of venue shall have been or shall be taken shall be liable to pay to the county to which such change shall have been or shall be taken, all such expenses as shall have been or shall be incurred by such county to which such change shall have been or shall be taken, in consequence of such change, and in all cases, the fees paid by such county to the jury trying the case, and any of the regular panel not engaged in such trial, allowance to bailiffs, and all other expenses necessarily incurred by such county, and consequent upon such change of venue and the trial of such cause. Such expenses shall be audited and allowed by the court to which such cases shall have been changed; and such court shall certify such allowance to the county clerk of the county from which the change of venue was first taken; and such county clerk shall issue his warrant on the treasurer of the county for the amount so allowed and certified.

No change in vacation, exception.

(4454) § **4**. No change of venue shall be granted in vacation unless the opposite party has been given ten days notice of the application therefor.

ARTICLE 14.—DEPOSITIONS.

SECTION.
1. Before whom taken.
2 Notice, contents, service.
3 Time to travel, etc., allowed.
4 Notice, how served.
5. When court may order taking.
6 When taken and used.
7 Deponent not obliged to leave county.
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12. By whom written and signed.
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SECTION.
18. Foreign depositions, how taken, notice.
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24. Perpetuating testimony, notice.
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26. Filing and keeping sealed.
27. Publication.
28. Record and copy, evidence.
29 Deposition, when used.
30. Unimportant deviation.
31. Adverse party, when allowed expenses.
32. Taking by interrogatories, proviso.

Before whom taken.

(4455) § **1**. Depositions of witnesses, taken within or without the Territory, may be taken, according to the regulations hereinafter provided, before any judge, justice of the peace, notary pub-

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lic, mayor or recorder of a city, clerk of a court of record, or commissioner appointed by the court to take depositions; but depositions shall not be taken before any person being of kin to either party or interested in the action.

Notice, contents, service.

(4456) § **2.** A party wishing to take depositions shall give notice to the adverse party, if there be only one person; if there be several, to any one of them who is a real party in interest, his agent or attorney. Such notice shall specify:

First. The cause or matter in which the deposition is to be used.

Second. The court or tribunal in which the trial is to be had.

Third. The time and place of taking the deposition, and the names of the witnesses.

Time to travel, etc., allowed.

(4157) § **3.** The adverse party shall be allowed a reasonable time to travel from his usual place of abode to the place of taking the deposition, by the ordinary route of travel, exclusive of the day of service, the day of taking the deposition and the intervening Sundays. If served on an attorney or agent, a reasonable time shall be allowed him to communicate the same to the party.

Notice, how served.

(4458) § **4.** The notice may be served in the same manner, and by any person authorized to serve a summons for a witness. If neither the party nor his agent or attorney reside in this Territory, the notice may be filed in the clerk's office, or published three weeks successively in the county in which the suit is pending.

When court may order taking.

(4459) § **5.** In all actions, the court may order the taking of depositions, whenever deemed necessary to determine the rights of the parties, or to expedite the trial of causes; and may, if necessary for that purpose, order a continuance until the next term.

When taken and used

(4460) § **6.** In all actions, depositions may be taken by either party, in vacation or term time, at any time after service of summons, without order of court therefor. They may be used in the trial of all issues, in any action, in the following cases:

First. Where the witness does not reside in the county, or in a county adjoining the one in which the trial is to be held, or is absent from the county.

Second. When the deponent is so aged, infirm, or sick, as not to be able to attend the court or other place of trial, or is dead.

Third. When the depositions have been taken by agreement of the parties, or by the order of the court trying the cause.

Fourth. When the deponent is a Territorial or county officer, or judge, or a practicing physician, or attorney at law, and the trial is to be had in any county in which the deponent does not reside. In either of the foregoing cases, the attendance of the witnesses cannot be enforced.

Fifth. When notice is given fixing the time of taking any deposition on a day in term time, the court may, if in session, or the judge thereof in vacation, on notice being given by the adverse party of the time and place of hearing the motion, fix another day for such taking, and the court, on the hearing of such motion,

may fix the time for such taking from which there shall be no appeal.

Deponent not obliged to leave county.

(4461) § **7**. A witness is not obliged to attend for examination upon a deposition in any other county than that of his residence, but may consent to do so.

When not read, exception.

(4462) § **8**. No deposition shall be read in evidence on the trial of a cause, if at that time the witness is produced in court, unless the deposition has been taken by the agreement of the parties or by the order of the court.

Attendance, how enforced.

(4463) § **9**. The officer taking the deposition shall have power to summon and compel the attendance of witnesses. In case of the refusal of a witness to attend and testify, such fact shall be reported by the officer to any district or probate court of the county, or the judge thereof, and such court or judge shall order such witness to attend and testify; and on failure or refusal to obey such order, such witness shall be dealt with as for a contempt.

All officers to report non-attendance.

(4464) § **10**. The provisions of the last section shall extend to all officers and commissioners authorized to take depositions in this Territory, to be read in the courts of other states, territories or countries.

Oath, manner of examination.

(4465) § **11**. The deponent shall first be sworn by the officer to testify to the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which the deposition is to be taken; and he shall then be examined by the party producing him and then by the adverse party, and by the officer or parties afterward, if they see cause.

By whom written and signed.

(4466) § **12**. The deposition shall be written down by the officer, or by the deponent or by some disinterested person, in the presence and under the direction of the officer; and after the same has been carefully read to or by the deponent, it shall be subscribed by him.

Certificate

(4467) § **13**. The officer shall annex a certificate to the deposition, stating the following facts:

First. That the deponent was sworn according to law.

Second. By whom the deposition was written; and if written by the deponent or some disinterested person, that it was written in the presence and under the direction of the officer.

Third. Whether or not the adverse party attended.

Fourth. The time and place of taking the deposition, and the hours between which the same was taken. And the officer shall sign and attest the certificate, and seal the same, if he have a seal of office.

Sealing, enclosing, directing, endorsing.

(4468) § **14**. The officer taking the deposition shall seal up the same in a sufficient paper envelope, and direct the same to the clerk of the court in which the action is pending, indorsing on the envelope the names of the parties and of the witnesses whose depositions are enclosed.

Cause of taking shown at reading.

(4469) § **15**. When a deposition is offered to be read in evidence, it must appear to the satisfaction of the court that the cause for taking and reading it still exists.

Commission only for foreign country.

(4470) § **16**. When a deposition is to be taken within or without the Territory, but within the United States no commission

may be issued for taking the deposition. When taken out of the United States the clerk shall, upon the request of the party taking the deposition, issue a commission to the officer or commissioner designated to take the depositions. No order of court or affidavit shall be necessary to authorize the issuing of the commission.

Certificate, when authenticated.

(4471) § **17**. When the commission contains the name of the officer before whom the deposition is to be taken, his attestation officially certifying the same, shall be sufficient; but if the commission do not specify the name of the officer, and he have no official seal, his certificate shall be authenticated by the certificate and seal of the clerk or prothonotary of any court of record of the county in which the officer exercises the duties of his office.

Foreign depositions, how taken, notice.

(4472) § **18**. When the depositions are to be taken within the Territory or in a foreign country, they may be taken pursuant to an order of the court, under a commission, with such reasonable notice of the time and place of taking the same as the court shall require; and they shall be certified and returned by the commissioner in such manner as the court shall direct.

Filing, continuance, when had

(4473) § **19**. Every deposition intended to be read in evidence, must be filed in court at least one day before the time at which the cause in which the deposition is to be used stands on the docket for trial; or, if filed afterward, and claimed to be used on the trial, the adverse party shall be entitled to a continuance, at the costs of the party filing the deposition, upon showing good cause by affidavit.

Publication, when had.

(4474) § **20**. Depositions, after being filed, may be published by the clerk, at the request of either party.

Objections to competency.

(4475) § **21**. Objections to the competency of a deponent, or to the propriety of any question proposed to him or answers given by him, may be made at the time of taking his deposition or in court whether made at the taking of the deposition or not. No deposition shall be suppressed for any informality therein or in the taking thereof unless such informality shall be prejudicial to the substantial right of the party.

Objections to validity.

(4476) § **22**. All objections to the validity of any deposition, or its admissibility in evidence, shall be made before entering upon the trial; not afterward. But any deposition after the commencement of the trial may be suppressed, if any matter which is not disclosed in the deposition appears, which is sufficient to authorize such suppression.

When used in another action.

(4477) § **23**. When an action has been dismissed, and another action has been commenced for the same cause, the depositions taken in the first action may be used in the second or any other action between the parties, or their assignees or representatives, for the same cause; but it must appear that the depositions have been duly filed in the court where the previous cause was pending, and have remained on file from the time the action was dismissed until the time at which it was proposed to use them.

Perpetuating testimony, notice.

(4478) § **24**. Whenever any person shall make affidavit before any district or probate court, or judge thereof, or clerk of the court, that such person expects to be made a party in any action

thereafter to be commenced, and that the testimony of the affiant or any other person, whether residing within or out of the Territory to be named in the affidavit, is material and necessary to the prosecution or defense thereof, the court or officer before whom the affidavit is made shall order reasonable notice to be given to the party expected to be adverse to the applicant or his attorney, that on the day and at the place in such notice to be expressed, the witness will be examined conditionally before such officer as shall be specified in the order.

Manner of taking.

(4479) § **25**. Upon proof that the notice has been given, either by personal service, or advertisement at least three weeks successively in some newspaper published in the proper county, or the one most convenient thereto (when the person to be notified is not an inhabitant of the Territory), being made to the officer authorized to take the testimony, he shall proceed to take, and certify, seal up and return the depositions according to the rules provided for other depositions in this act.

Filing and keeping sealed.

(4880) § **26**. Every affidavit and order, and every deposition, so taken and certified, shall, within thirty days after the deposition is taken, be filed in the office of the clerk of the proper court of the county where the subject matter of such expected suit may be situated. The clerk shall file said deposition, and it shall remain sealed until published by order of the court after commencement of such expected action.

Publication.

(4481) § **27**. Any deposition which has heretofore been taken and filed for the purpose of perpetuating testimony, in pursuance of any existing or former statute of this Territory, as well as any deposition which may hereafter be taken and filed to perpetuate testimony, may, at any time, either before or after the commencement of the action in anticipation of which such deposition may have been taken, be published by order of the court in the office of whose clerk the same may be filed, on the motion of any person or party interested in the preservation of the testimony; and such deposition, with all the accompanying affidavits, orders, notices and other documents shall be directed by such court to be entered of record in the order-book of such court, at the cost of the party making such motion; and such record shall contain a statement or recital of the date of the filing of such deposition.

Record and copy, evidence.

(4482) § **28**. The record of any deposition recorded under the provisions of the last section, and copies of such record, duly certified, may be used as evidence whenever and wherever the original deposition might be used.

Deposition, when used.

(4483) § **29** Upon the proof of the death, insanity, or absence from the Territory of such witness, or inability by reason of age or infirmity to attend, the deposition, or a certified copy thereof by the clerk of the court where the same is filed, shall be admitted as evidence in any court in this Territory, in any cause between the parties named in the affidavit, or in any cause between persons claiming under either of said parties, and shall have like effect as if the witness had been personally present and given oral testimony therein, saving the right of exception in all cases

on account of the incompetency of the witness or of any part of the testimony contained in the deposition.

Unimportant deviation.

(4484) § **30.** An unimportant deviation from any direction relative to taking deposition shall not cause any deposition to be excluded where no substantial prejudice would be done to the opposite party.

Adverse party, when allowed expenses.

(4485) § **31.** When a party shall, in response to a notice to take depositions orally, attend at the time and place, by himself or attorney, and the deposition shall not be taken, he shall, upon notice and affidavit of the fact, have judgment against the party at whose instance the notice was given, for two dollars per day for each day he may have attended under the notice, and six cents per mile for the distance necessarily travelled in going to and returning from the place fixed for taking such depositions, unless it shall be shown that the failure to take such depositions did not result from the negligence or fault of the party giving such notice.

Taking by interrogatories, proviso.

(4486) § **32.** The deposition may be taken upon written interrogatories as follows: The parties desiring to take such deposition shall serve notice of his intention, together with a copy of the interrogatories which he intends to propound. The opposite party may file with the clerk within five days such cross-interrogatories as he desires to propound. The clerk shall then issue to some officer by him to be selected, authorized to take depositions, a commission with the interrogatories, cross-interrogatories, and re-examining interrogatories annexed thereto, requiring him to cause the witness to come before him at such time and place as he may appoint, and to faithfully take his deposition, upon the questions annexed to the commission, and thereupon to make return to the court of his doings under such commission without delay. The officer shall first swear or affirm the witness that he will make a true, full and perfect answer to the interrogatories to be propounded to him; and then he shall propound the interrogatories annexed to the commission in their order, and accurately write the answers of the witness to such. He shall then read carefully to the witness such interrogatories and his answer thereto, and correct the answers as the witness may desire; and then the witness shall sign such deposition. Neither the parties, their agents or attorney, shall be present, nor shall they, or any of them be informed of the nature of the evidence until the deposition is, finished. The officer shall annex to the deposition his certificate, showing specifically, a fulfillment of each requirement of this section; and shall then enclose the deposition with the commission, interrogatories, and the answers securely sealed, and transmit the same, addressed to the clerk of the court in which the suit is pending, with the title of the cause indorsed thereon: *Provided, however*, If the parties served with notice, as in this section provided, shall prefer to cross-examine the witness orally, he shall notify the opposite party of such election within three days after receiving notice, and in that case the deposition shall not be taken without notice to him of the time and place thereof, and he shall have the privilege of an oral examination; and the commission and officer's certificate shall be modified accordingly.

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SECTION.
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26. Inspection and copy, when ordered.
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28. All notices in writing, service.
29 Filing of clerk presumptive evidence.

(4487) § **1**. There shall be no difference in evidence between sealed and unsealed writings, and every writing not sealed shall have the same force and effect that it would have if sealed. A writing under seal therein, may, therefore, be changed, or altogether discharged, by a writing not under seal. An agreement in writing, without a seal, for the compromise or settlement of a debt, is as obligatory as if a seal were affixed. Sealed and unsealed writings.

(4488) § **2**. The execution of an instrument is the subscribing and delivering it, with or without affixing a seal. Instruments, how executed.

(4489) § **3**. Recitals in any written instrument shall have no greater effect than they have heretofore had in writings not under seal. Effect of recitals

(4490) § **4**. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state or territory, from which they are taken. Legislative acts and judicial records authenticated, effect.

(4491) § **5**. All records and examplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish or district in which such office may be kept, or of the Governor, or Secretary of the Territory, the Chancellor, or Other public records authenticated, effect.

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keepers of the great seal of the state or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of the court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and seal of his office, that the said presiding justice is duly commissioned and qualified; or if given by such Governor, Secretary, Chancellor, or keeper of the great seal, it shall be under the great seal of the state, territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States, as they have by law or by usage in the courts or offices of the state or territory, or country as aforesaid, from which they are taken.

Statutes of states, etc., evidence.

(4492) § **6.** The printed statute books of the several states and territories of the United States, purporting to be printed under the authority of those states and territories, without further proof, shall be presumptive evidence, in all courts, of the legislative acts, public or private, of those states or territories respectively.

Judgment o justices, etc., of states.

(4493) § **7.** Copies of the proceedings and judgments of any justice of the peace of any state or territory of the United States, or of the District of Columbia, certified by the justice or justices, under his or their hands and seals, before whom the proceedings were had or judgment rendered, or their successors in office, or other justices having legal custody thereof, that the same are true and complete copies of the proceedings or judgments, with the certificate of the clerk or prothonotary of any court of record of the county or district where said justice or justices shall hold his or their office or offices, certifying, under the seal of said court, that the justice or justices was or were at the time when the proceedings were had or judgments rendered, and when the copy was taken, duly commissioned and qualified to act as such, shall be admissible as evidence in any of the courts of this Territory.

Judgments of justices in this territory.

(4494) § **8.** Copies of the proceedings and judgments of any justice of the peace of this Territory, certified under his hand, or under the hand of the justice who may have the legal custody thereof, as true and complete copies of such proceedings or judgments, shall be received as evidence in the several courts of this Territory.

Certificates of notaries public

(4495) § **9.** Certificates or instruments, either printed or written, purporting to be the official act of a notary public of this Territory, of the District of Columbia or of any other state or territory of the United States, and purporting to be under the seal and signature of such notary public, shall be received as presumptive evidence of the official character of such instrument and of the facts therein set forth.

Certificate of Secretary of the Territory,

(4496) § **10.** The certificate of the Secretary of the Territory, under the seal of the Territory, stating the time when any act or acts of the Legislative Assembly were deposited in his office, or deposited in the office of the clerk of any district or probate court

in this Territory, as shall appear from the certificate or receipt of any such clerk, shall be admissable in all the courts of this Territory as evidence of the facts stated in the Secretary's certificate.

Copies of records, etc., in public places.

(4497) § **11**. Exemplifications or copies of record, and records of deeds and other instruments, or of office books or parts thereof, and official bonds which are kept in any public office in this Territory, shall be proved or admitted as legal evidence in any court or office in this Territory, by the attestation of the said records or books, deeds or other instruments, or official bonds, that the same are true and complete copies of the records, bonds, instruments or books, or parts thereof in his custody, and the seal of office of said keeper thereto annexed, if there be a seal, and if there be no official seal, there shall be attached to such attestation, the certificate of the clerk, and the seal of the district or probate court of the proper county where the keeper resides, that such attestation is made by the proper officer.

Land office registers, etc.

(4498) § **12**. The register, catalogue, tract book, plat book, and description of lands kept by any land officer of the United States located in this Territory and copies thereof duly certified as true and complete by their proper keeper, and copies duly cetified by the proper officer of the Territory as true and complete copies from said original documents or from copies of the same legally deposited in the office of the proper officer shall be admissible in evidence in civil actions in all the courts of this Territory, and shall be taken and held as *prima facie* evidence of the truth of their contents.

Land office certificates.

(4499) § **13**. Every certificate of purchase at a land office of the United States shall be *prima facie* evidence of legal title to the land therein described.

Corporate acts proved by sworn copy

(4500) § **14**. The acts and proceedings of corporations may be proved by a sworn copy of the record of such acts and proceedings. The oath shall state that such transcript is a true and full copy of the original, and that such original has remained unaltered from its date, to the best of deponent's knowledge and belief. Such sworn copies shall be received as evidenee in all cases where the original would be evidence.

Legislative acts of any state or territory.

(4501) § **15**. Every act of the legislature of any one of the states or territories of the United States, certified by the Secretary, and having the seal of the state or territory affixed thereto, shall be deemed authentic, and receive full faith and credit when offered in evidence in any court within this Territory.

Patents and records.

(4502) § **16**. All patents issued by the United States conveying real estate in this Territory, and the records of such patents as have been duly recorded, shall be taken and received as competent evidence in all the courts of this Territory; and all such patents that have not been recorded may be recorded as other deeds and conveyances are now recorded by law; and such record shall be competent evidence in all the courts of the Territory.

Record of patents, etc. evidence.

(4503) § **17**. The record of all patents and all certificates of purchase, and all other evidence in writing of the sale of real estate, whether issued by the United States or by this Territory,

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or made by any person or corporation, and all duly certified copies of such record, shall be admissible in evidence in all courts and places with the same force and effect as if the original was produced.

Proceedings of courts of record.

(4504) § **18**. The records and judicial proceedings of the several courts of record of or within the United States or the territories thereof shall be admitted in the courts within this Territory as evidence, by attestation or certificate of the clerk or prothonotary, and the seal of the court annexed, together with the seal of the chief justice or one or more of the judges, or the presiding magistrate of any such court, that the person who signed the attestation or certificate was, at the time of subscribing it, the clerk or prothonotary of the court, and that the attestation is in due form of law; and the records and judicial proceedings, authenticated as aforesaid, shall have full faith and credit given to them in any court within this Territory, as by law or usage they have in the courts whence taken.

Proof of publication of notice.

(4505) § **19**. When notice is, in any action, proceeding, or rule under execution or other matter required by the provisions of law to be given by public agents in any newspaper, an affidavit of the printer, annexed to a copy of the notice taken from the paper in which it was published, may be filed in the clerk's office by the person whose duty it was to cause the publication to be made. Such affidavit must specify the county, the time when, and the paper in which the notice was published.

Affidavit and copy of notice presumptive, evidence.

(4506) § **20**. The original affidavit and copy of the notice filed pursuant to the provisions of the last section, and copies thereof duly certified by the clerk, shall be presumptive evidence in all cases and before every court of the facts contained in the affidavit.

Affidavit taken in another state, when evidence.

(4507) § **21**. When an affidavit is taken in another state or Territory, and certified by the officer or justice of the peace taking the same under his hand and the seal of office, if he have any such seal, and attested by the clerk of the district or probate court of the county where such officer exercises the duties of his office, under the hand of the clerk and the seal of his court, the clerk also certifying that the officer or justice of the peace is by the laws of said state or territory duly empowered to administer oaths and affirmations and make affidavits, every such affidavit shall be deemed sufficiently authenticated and may be received and used in any of the courts of this Territory.

Common law and reports of other states.

(4508) § **22**. The unwritten or common law of any other of the United States or of the territories thereof, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted in evidence of such law.

Law of foreign country

(4509) § **23**. The existence and tenor or effect of the laws of any foreign country may be proved as facts by parol evidence, but if it shall apear that the law in question is contained in a written statute or code, the court may, in its discretion, reject any evidence of such law which is not accompanied by a copy thereof.

(4510) § **24**. If either party, at any time before trial, allow

the other an inspection of any writing, material to the action, whether mentioned in the pleadings or not, and deliver to him a copy thereof, with notice that he intends to read the same in evidence on the trial of the cause, it may be so read without proof of its genuineness or execution, unless denied by affidavit before the commencement of the trial; if such denial be made of any writing not mentioned in the pleadings, the court may give time to either party to procure evidence, when necessary for the furtherance of justice.

Production of books, papers, etc.

(4511) § **25.** The court, or judge thereof, may, upon affidavit of their necessity and materiality, upon motion, compel by order, either party to produce, at or before the trial, any book, paper, or document in his possession or power; the order may be made upon application of either party, upon reasonable notice to the adverse party or his attorney. If not produced, parol evidence may be given of its contents.

Inspection and copy, when ordered

(4512) § **26.** The court, or a judge thereof, may, under proper restrictions, upon due notice, order either party to give the other, within a specified time, an inspection and copy of any book or part thereof, paper, or document, in his possession, or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the court, on motion, may exclude such evidence, or punish the party refusing, or both.

Proof of service of process or notice

(4513) § **27.** The proof of the service of any process issued by the court, or of any notice required to be served upon any party, shall be as follows:

First. If served by the sheriff, his certificate thereof.

Second. By any other person, his affidavit thereof.

Third. In case of publication, a printed copy, with the affidavit of the printer, his foreman or clerk, or of any competent witness

Fourth. The written admission of the defendant. The affidavit or admission must state the time and place of service.

All notices in writing, service

(4514) § **28.** In all cases where notice is required by this act, it must be in writing, and may be served by the proper officer or any other person.

Filing of clerk, presumptive evidence.

(4515) § **29.** The clerk shall endorse upon every paper filed in his office or in open court, and upon every process returned to him or to the court, except summonses, the date of the filing and return; and the indorsement shall be presumptive evidence of the time of the filing and return.

SECTION.
1. Summons, service.
2. Service by copy, when.
3. No attachment except upon affidavit.
4. Summons, how issued, what to contain.
5. More than three, costs, exception.
6. In the county, prepayment unnecessary.
7. Out of county, prepayment necessary.
8. Attachment for non-attendance
9. When non-resident witness may demand fees.
10. Oath, form of.
11. Interpreters, pay of.
12. Competent witnesses.
13. Who are competent witnesses.
14. When an executor or administrator is party, proviso.
15. When heirs or devisees are parties.
16. When agent of decedent testifies; restitution.
17. Husband and wife.
18. Assignor or grantor, proviso.
19. When executor or administrator competent.
20. Experts.
21. Religious belief; general moral character.
22. Credibility.
23. Party producing not to impeach, exception.
24. Impeachment.
25. Party may be examined.
26. Time, before whom, notice.
27. Attendance enforced; filing and reading.
28. Evidence rebutted.
29. Penalty for refusing to attend.

Summons, service.

(4516) § **1.** The clerk of the proper court shall issue a summons for witnesses upon the application of any party to the action. The summons may be served by the party or any person, or by the sheriff. The party, or any other person than the sheriff, shall not be entitled to fees for the service. When a summons is served by the sheriff, his return is proof of the service. When served by any other person, the service must be shown by affidavit.

Service by copy, when.

(4517) § **2.** Where a summons from any court of this Territory, for a witness can not be served by reading, on account of the temporary absence of such witness from his last usual place of residence within the jurisdiction of the officer having such process, or when such witness, so conceals himself within such jurisdiction that such process cannot be read to him, the same may be served by leaving a copy thereof, certified to be a true one by such officer at such residence; but in no case shall service by copy be made when such officer has reasonable cause to believe that such witness has removed his residence without such jurisdiction.

No attachment except upon affidavit.

(4518) § **3.** In no case shall an attachment issue against a witness upon whom such service by copy only has been made, until the party applying therefor, or his attorney, shall make affidavit in the court from which it is sought to be issued, that he has reasonable cause to believe, and does believe, that the witness against whom the summons issued had knowledge of the service thereof by copy in time to have obeyed its commands.

Summons, how issued, what to contain.

(4519) § **4.** The summons shall be issed and attested by the clerk without seal, and one summons shall include all the witnesses required at the same time, residing in the same county.

More than three, costs, exception.

(4520) § **5.** If any party summon more than three witnesses to prove the same fact, he shall pay the costs occasioned by the additional number of witnesses, unless the court shall otherwise order.

In the county, prepayment unnecessary.

(4521) § **6.** Witnesses residing in the county where the court is held shall be compelled to attend in obedience to the summons

without payment or tender of fees being first made, unless he demand such fees at the time he is summoned.

Out of county prepayment necessary.

(4522) § **7.** A witness shall not be obliged to attend before a court or judge out of the county where he resides, unless his legal fees for travelling to and from the court, and one day's attendance are paid or tendered before or at the time of the service of the summons.

Attachment for non-attendance

(4523) § **8.** The attendance of all witnesses when duly summoned and to whom fees have been paid or tendered in cases required by law, may be enforced by attachment.

When non-resident witness may demand fees.

(4524) § **9.** At the commencement of each day after the first day, a witness attending a trial out of the county in which he resides shall be entitled to demand and receive the legal fees for that day in advance. If not thus paid, he is not compelled to attend or remain as a witness.

Oath, form of.

(4525) § **10.** Before testifying, every witness shall be sworn to testify the truth, the whole truth, and nothing but the truth. The mode of administering an oath shall be such as may be most consistent with and binding upon the conscience of the person to whom the oath may be administered.

Interpreter, pay of.

(4526) § **11.** Interpreters may be sworn to interpret truly whenever necessary; and they shall receive the same fees and mileage as witnesses.

Competent witnesses.

(4527) § **12.** All persons, whether parties to or interested in the suit, shall be competent witnesses in a civil action or proceeding, except as herein otherwise provided.

Who not competent witnesses.

(4528) § **13.** The following persons shall not be competent witnesses:

First. Persons insane at the time they are offered as witnesses, whether they have been so adjudged or not.

Seeond. Children under ten years of age, unless it appears that they understand the nature and obligation of an oath.

Third. Attorneys, as to confidential communications made to them in the course of their professional business, and as to advice given in such cases.

Fourth. Physicians, as to matter communicated to them, as such, by patients, in the course of their professional business, or advice given in such cases.

Fifth. Clergymen, as to confessions or admissions made to them in eourse of discipline enjoined at their respective churches.

Sixth. Husband and wife, as to communications made to each other. Neither husband nor wife shall in any case be a witness against the other, except in a criminal prosecution for a crime committed one against the other, or in a civil action or proceeding by one against the other; but they may in all civil and criminal cases be witnesses for each other.

When an executor or administrator is party, proviso.

(4529) § **14.** In suits or proceedings in which an executor or administrator is a party, involving matters which occurred during the lifetime of the decedent, where a judgment or allowance may be made or rendered for or against the estate represented by such executor or administrator, any person who is a necessary party to the issue or record, whose interest is adverse to such estate, shall

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not be competent witnesees as to any personal transaction or communication had with the deceased: *Provided, however*, That in cases where a deposition of such decedent has been taken, or he has previously testified as to the matter, and his testimony or deposition can be used as evidence for such executor or administrator, such adverse party shall be a competant witness for himself, but only as to any matters embraced in such deposition or testimony.

When heirs or devisee are parties.

(4530) § **15**. In all suits by or against heirs or devisees, founded on a contract with or demand against the ancestor, to obtain title to or possession of property, real or personal, of, or in rights of such ancestor, or to effect the same in any manner, neither party to such suit shall be a competent witness as to any matter which occurred prior to the death of the ancestor.

When agent of decedent testifies, restitution.

(4531) § **16**. When in any case an agent of a decedent shall testify on behalf of an executor, administrator, or heirs, concerning any transaction, as having been had by him, such agent, with a party to the suit, his assignor or grantor, and in the absence of the decedent; or if any witness shall, on behalf of the executor, administrator, or heirs, testify to any conversation or admission of a party to the suit, his assignor or grantor, as having been had or made in the absence of the deceased; then the party against whom such evidence is adduced, his assignor or grantor, shall be competent to testify concerning the same manner. No such person who shall have acted as an agent in the making or continuing of a contract with any person who may have died, shall be a competent witness in any suit upon or involving such contract, as to matters occurring prior to the death of such decedent, on behalf of the principal to such contract against the legal representatives or heirs of the decedent, unless he shall be called by such heirs or legal representatives. And in such case he shall be a competent witness only or to matters concerning which he is interrogated by such heirs or representatives. When, in any case, a person shall be charged with unlawfully taking or detaining personal property, or having done damage thereto, and such person by his pleading shall defend on the ground that he is executor, administrator, guardian, or heir, and as such has taken or detains the property, or has done the acts charged, then no person shall be competent to testify who would not be competent if the person so defending were the complainant; but when the person complaining cannot testify, then the party so defending shall also be excluded.

Husband and wife.

(4532) § **17**. When the husband or wife is a party, and not a competent witness in his or her own behalf, the other shall also be excluded; except that the husband shall be a competent witness in a suit for the seduction of his wife, but she shall not be competent.

Assignor or grantor, proviso

(4533) § **18**. In all cases in which executors, administrators, heirs, or devisees are parties, and one of the parties to the suit shall be incompetent, as hereinbefore provided, to testify against them, then the assignor or grantor of a party making such assignment or grant voluntarily, shall be deemed a party adverse to

the executor or administrator, heir or devisee, as the case may be: *Provided, however*, That in all cases referred to the preceding sections, the objection to the competency of such witnesses may be waived. Or the court may, in its discretion, require any party to a suit, or other person, to testify; and any abuse of such discretion shall be reviewable upon appeal.

When executor or administrator competent.

(4534) § **19.** In all actions by an executor or administrator, on contracts assigned to the decedent, when the assignor is alive and a competent witness in the cause; the executor, or administrator and the defendant or defendants shall be competent witnesses as to all matters which occurred between the assignor and the defendant or defendants, prior to notice of such assignment.

Experts.

(4535) § **20.** A witness who is an expert in any art, science, trade, profession, or mystery may be compelled to appear and testify to an opinion, as such expert, in relation to any matter, whenever such opinion is material evidence, relevant to an issue on trial before a court or jury without payment or tender of compensation other than the per diem and mileage allowed by law to witnesses, under the same rules and regulations by which he can be compelled to appear and testify to his knowledge of facts relevant to the same issue.

Religious belief, general moral character.

(4536) § **21.** No want of belief in a Supreme Being or in the Christian religion shall render a witness incompetent; but the want of such religious belief may be shown upon the trial. In all questions effecting the credibility of a witness, his general moral character may be given in evidence.

Credibility.

(4537) § **22.** Any fact which might heretofore be shown to render a witness incompetent, may be hereafter shown to effect his credibility.

Party producing not to impeach, exception.

(4538) § **23.** The party producing a witness shall not be allowed to impeach his credit by evidence of bad character, unless it is indispensable that the party should produce him, or in case of manifest surprise, when the party shall have this right; but he may, in all cases, contradict him by other evidence, and by showing that he has made statements different from his present testimony.

Impeachment.

(4539) § **24.** When a witness, whether a party to the record or not, is cross examined, to lay the foundation of his impeachment by proof of an act or statement inconsistent with his testimony, and is asked if he did not do the act or make the statement and he answers that he does not recollect having done the act or made the statement, the party thus laying the foundation for impeachment shall have the right to introduce evidence of the act, or statement in the same manner as if the witness had answered that he had not done the act or made the statement.

Party may be examined.

(4540) § **25.** A party to an action may be examined as a witness concerning any matter stated in the pleading, at the instance of the adverse party, or of any one of the several adverse parties, for that purpose may be compelled, in the same manner, and subject to the same rules of examination as any other witness, to testify either at the trial, or conditionally, or upon commission.

Time before whom, notice.

(4541) § **26**. The examination instead of being had at the trial may be had at any time before the trial, at the option of the party claiming it, before any officer authorized to take depositions, on a previous notice to the party to be examined and any other adverse party of at least five days, unless for good cause shown, the court order otherwise. But the party to be examined before trial shall not be compelled to attend in any other county than that of his residence.

Attendance enforced, filing and reading

(4542) § **27**. The attendance of the party to be examined may be enforced and the examination shall be taken and filed as a deposition in the cause and may be read by the party taking it, at his option; but if not read, the party causing the examination shall pay the costs thereof.

Evidence rebutted.

(4543) § **28**. The evidence of the party thus taken may be rebutted by adverse testimony.

Penalty for refusing to attend

(4544) § **29**. Any party refusing to attend and testify, as above provided, may be punished as for a contempt and his complaint, answer or reply may be stricken out.

ARTICLE 17.—OFFER BEFORE TRIAL.

SECTION.
1. To allay judgment.
2. To confess judgment.

To allay judgment.

(4545) § **1**. The defendant may, at any time before the trial, serve upon the plaintiff an offer in writing, to allow judgment to be taken against him for the sum or property, or to the effect therein specified, with costs. If the plaintiff accept the offer in court, in the presence of the defendant, or give notice of acceptance in writing within five days and before the trial, judgment shall be entered accordingly. If the offer is not accepted, or notice of acceptance be not given as above directed, the offer is to be deemed withdrawn, and shall not be given in evidence, or commented on before the jury; and if the plaintiff fail to obtain a more favorable judgment, the defendant shall recover from the plaintiff the costs occasioned subsequent to the time of the offer.

To confess judgment

(4546) § **2**. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, and offer to confess judgment in favor of such person, for a specified sum on the cause of action. Whereupon, if the person, having had notice that the offer would be made, of its amount, and the time and place of making it, ten days before the first day of any term of the court, does not at such term accept the confession, and should afterward commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, or be given in evidence.

ARTICLE 18.—TRIAL BY JURY. Chap. 70.

SECTION.
1. Action, when for issue and trial.
2. Trial defined.
3 Order of trial
4. When jury shall appear.
5. Jury for regular panel.
6 Number of jurors.
7 Special jury.
8. Jury by agreement.
9 Struck jury by consent.
10 Struck jury upon notice.
11. Selector when clerk interested.
12 Fees for striking.
13. Struck jury; continuance if parties consent.
14. Challenge for interest.
15 Oath of jurors
16 Peremptory challenges
17. Calling talesmen.
18. Manner of trial.
19. Exceptions to instructions.
20. Argument.
21. View of property and place by jury.
22. Deliberation of jury.
23. Caution by court at each adjournment
24. Further instructions, when had
25. Cause again tried
26. Verdict written and signed.
27. Verdict, general or special.
28. Jury may find special verdict.
29. Special controls general.
30. Money verdict.
31. Verdict in replevin.

Action, when for issue and trial.

(4547) § **1.** Every action shall stand for issue and trial at the first term after it is commenced, when the summons has been served on the defendant ten days, and publication has been made for thirty days before the first day of the term: *Provided, however*, That when the complaint is filed, whether before or during any term of court, the plaintiff may fix the day during such term, by indorsement thereof upon the complaint at the time of filing the same on which the defendant shall appear; which day, when so fixed shall be stated in the summons when issued, and the action shall be docketed in its order. And if summons shall be personally served ten days before such day, or publication shall be made three weeks, thirty days before such day, such action shall thereupon stand for issue and trial at such term, and the court shall have jurisdiction to hear and determine such action, as if summons had been served, or publication made before the first day of the term, as hereinbefore provided. And if at any time, after the filing of the complaint, it shall be found that any party to the action has not been properly notified, the plaintiff may file with the clerk, or indorse on the complaint, a written request for such notice to be given, naming therein the day of the pending or subsequent term on which such party is required to appear to the action; and summons shall be issued or publication made accordingly in the proper cases, as above provided. And if summons shall be personally served ten days before such day, or publication made three weeks successively thirty days before such day, such case shall thereupon stand for issue and trial at such term, and the court shall have jurisdiction to hear and determine such action as if summons had been served or publication made before the first day of the term, as hereinbefore provided.

Trial defined.

(4548) § **2.** The trial is a judicial examination of the issue, whether of law or fact, in an action.

Order of trial.

(4549) § **3.** The trial in each action shall be in the order in which it stands upon the docket, unless the court, for good cause shown, shall direct otherwise.

When jury shall appear.

(4550) § **4.** The petit jury shall be summoned to appear on the first day designated for the trial of criminal business, and not

before. After the beginning of the trial term, the court shall proceed to try the cases in their regular order; which trials shall not be delayed or interrupted by the making up of issues. The judge shall as far as practicable, so arrange the cases to be tried by the court that the same may be tried after the discharge of the jury; and such jury shall be immediately discharged when the issues requiring it shall be disposed of.

Jury for regular panel

(4551) § **5**. In any civil action where the parties are entitled to a trial by jury, and either party shall demand such trial, the sheriff shall call a jury from the regular panel, except as hereinbefore provided.

Number of jurors.

(4552) § **6**. The number of jurors to try a civil action shall not exceed twelve, nor be less than three. The parties may determine the number of jurors by agreement; and in case of their disagreement, the number shall be twelve.

Special jury.

(4553) § **7**. The court shall have power when the business thereof requires it, to order the impaneling of a special jury for the trial of any cause.

Jury by agreement.

(4554) § **8**. The parties may agree upon the jurors to compose a special jury, and notify the court thereof; and the court shall thereupon, direct the sheriff to impanel such jury, if it can be done without unreasonable delay of the cause.

Struck jury by consent

(4555) § **9**. When both parties desire it, the court may direct the sheriff to summon eighteen competent jurors, or a less number; and the plaintiff first, and then the defendant, shall strike out one juror in turn until each has struck off six or more, and the remaining jurors shall try the cause. Or the parties, when they consent, upon being furnished with a list of jurors to be summoned, may exercise the right to strike out any part of the names before the jurors are summoned, and the remaining jurors only shall be summoned.

Struck jury, upon notice.

(4556) § **10**. Whenever a struck jury shall be deemed necessary for the trial of any civil cause in any district or probate court of this Territory, it shall be lawful for either party to file with the clerk a demand for such jury; when it shall be the duty of such clerk to give four days notice to both parties, or to their attorneys, of the time of striking the same. At the time designated, said clerk shall attend at his office, and in the presence of the parties or of such of them as shall attend for that purpose shall select from the number of persons qualified to serve as jurors within the county, forty such persons as he shall think most indifferent between the parties and best qualified to try such cause; and then the party requiring such jury, his agent or attorney, shall first strike off one of the names, and then the opposite party, his agent or attorney, another, and so on alternately, until each shall have struck out twelve. If either party shall not attend in person or by attorney, it shall be the duty of the clerk to strike out for the party not attending. When each party shall have stricken out twelve names as aforesaid, the clerk shall make a fair copy of the names of the remaining sixteen persons, and immediately thereafter, issue process, directing the sheriff of the county to summon said sixteen persons, as jurors

struck for the trial of such cause, stating the day for which it is set for trial; and such sheriff shall, thereupon summon accordingly. But in all cases, it shall be necessary to strike such jury at least five days previous to the day at which said case is set for trial on the docket, and two days service of the process by the sheriff shall be held sufficient. And upon the trial of the cause, the jury so struck shall be called as they stand upon the panel, and the first twelve of them who shall appear, and are not challenged for cause or set aside by the court, shall be the jury, and shall be sworn to try the said issue : *Provided, however,* That unless at least one-half of such struck jury shall have been summoned and shall be in attendance and such cause is called for trial, the case shall be tried by the regular petit jury as other cases

Selected, when clerk interested.

(4557) § **11**. If the clerk of such court shall be interested in the cause, or related to either of the parties, or does not stand indifferent between them, in every such case the judge entitled to try said cause may in vacation or term time name some judicious and disinterested person to strike the jury, and to do and perform all things required to be done by such clerk relating to the striking of such jury.

Fees for striking

(4558) § **12**. The party requiring such struck jury shall pay the fees for striking the same, and one dollar and twenty-five cents each day for each juror so attending, and shall not have an allowance therefor in the taxation of costs, unless the court shall be of opinion that the cause required such special jury; in which last case, the extraordinary expense shall be taxed in the bill of costs. If the court upon motion of either party, shall have ordered a struck jury, then the costs thereof shall abide the event of the suit.

Struck jury, continuance, if parties consent

(4559) § **13**. A struck jury for the trial of the cause at any term of the court may be continued with the continuance of the cause, and be summoned in as jurors, at a subsequent term, provided both parties consent thereto, but not otherwise.

Challenge for interest

(4560) § **14**. It shall be sufficient cause for challenge to a juror, that he is interested in another suit, begun or contemplated, involving the same or a similar matter.

Oath of jurors.

(4561) § **15.** Before the commencement of the trial an oath must be administered to each juror, that he will well and truly try the matter in issue between the parties, and a true verdict give, according to the law and the evidence.

Peremptory challenge

(4562) § **16**. In all cases where the jury consists of six or more persons, each party shall have three peremptory challenges.

Calling talesmen.

(4563) § **17**. When the regular panel is exhausted, or is insufficient from any cause, the sheriff shall call the bystanders, or fill the jury in such a manner as the court may direct.

Manner of trial.

(4564) § **18**. When the jury is sworn, the trial shall proceed in the following order, unless the court, for special reasons, otherwise directs:

First. The party upon whom rests the burden of the issue may briefly state his case and the evidence by which he expects to sustain it

Second. The adverse party may then briefly state his defense and the evidence he expects to offer in support of it.

Third. The party on whom rests the burden of the issues must first produce his evidence; the adverse party will then produce his evidence, which may be rebutted.

Fourth. When the evidence is concluded, and either party desires special instructions to be given to the jury, such instrnctions shall be reduced to writing, numbered and signed by the party or his attorney asking the same, and delivered to the court.

Fifth. Before the argument of the cause, the court shall give general instruction to the jury, which shall be in writing, and be numbered and signed by the judge.

Sixth. Where either party asks special instructions to be given to the jury, the court shall either give each instruction as requested, or positively refuse to do so; or, give the instructions with a modification, in such manner that it shall distinctly appear what instructions were given, in whole or in part, and, in like manner those refused, so that either party may except to the instructions as asked for, or as modified, or to the modification. All instructions given by the court must be signed by the judge, and filed, together with those asked for by the parties, as a part of the record. The instructions shall not be entered at large on the final record, unless either party may wish to remove the cause to a district court.

Exceptions to instructions,

(4565) § **19**. A party excepting to the giving of instructions, or the refusal thereof, shall not be required to file a formal bill of exception; but it shall be sufficient to write on the margin, or at the close of such instruction, "refused and excepted to," or "given, and excepted to," which memorandum shall be signed by the judge, and dated.

Argument.

(4566) § **20**. The parties may either submit or argue the case to the jury. In the argument, the party having the burden of the issue shall have the opening and closing, but shall disclose in the opening all the points relied on in the cause; and if in the closing he refer to any new point or fact not disclosed in the opening, the adverse party shall have the right of replying thereto, which reply shall close the argument in the case.

View of property and place by jury

(4567) § **21**. Whenever in the opinion of the court, it is proper for the jury to have a view of the real or personal property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of a sworn officer, to the place, which shall be shown to them by some person appointed by the court for that purpose While the jury are thus absent, no person, other than the person so appointed shall speak to them on any subject connected with the trial.

Deliberation of jury.

(4568) § **22**. Whenever a case is finally submitted to the jury. they may decide in court, or retire for deliberation. If they retire, they must be kept together in some convenient place, under the charge of a sworn officer, until they agree upon a verdict or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily and at their meals. The

officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon, where there is a panel of twelve jurors nine may return a verdict.

Caution by court at each adjournment.

(4569) § **23**. If the jury are permitted to separate, either during the trial or after the cause is submitted to them, they must be admonished by the court that it is their duty not to converse with each other, or suffer themselves to be addressed by any other person, on any subject of the trial; and during the trial, that it is their duty not to form or express among themselves an opinion thereon, until the cause is finally submitted to them.

Further instructions, when had.

(4570) § **24**. After the jury have retired for deliberation, if there is a disagreement between them as to any part of the testimony, or if they desire to be informed as to any point of law arising in the case, they may request the officer to conduct them into the court, where the information required shall be given in the presence of, or after notice to, the parties or their attorneys.

Cause again tried.

(4571) § **25**. In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately or at a future time, as the court may direct.

Verdict written and signed.

(4572) § **26**. When the jury have agreed upon their verdict, it must be reduced to writing and signed by the foreman; and when returned into court the foreman shall deliver the verdict and either party may poll the jury. If four jurors dissent from the verdict, they shall again be sent out to deliberate.

Verdict, general or special.

(4573) § **27**. The verdict of the jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find facts only, leaving judgment thereon to the court.

Jury may find special verdict

(4574) § **28**. In all actions, the jury, unless otherwise directed by the court, may, in their discretion, render a general or special verdict; but the court shall, at the request of either party, direct them to give a special verdict in writing upon all or any of the issues; and in all cases, when requested by either party, shall instruct them, if they render a general verdict, to find specially upon particular material questions of fact, to be plainly stated in writing. This special finding is to be recorded with the verdict.

Special controls general.

(4575) § **29**. When the special finding of facts is inconsistent with the general verdict, the former shall control the latter. and the court shall give judgment accordingly.

Money verdict.

(4576) § **30**. In actions for recovery of money, the jury must assess the amount of the recovery.

Verdict in replevin.

(4577) § **31**. In actions for the recovery of specific personal property, the jury must assess the value of the property, as also the damages for the taking or detention, whenever, by their

verdict, there will be a judgment for the recovery or return of the property.

ARTICLE 19.—TRIAL BY COURT.

SECTION.
1. Jury, how waived.
2. Special findings by court.
3. Rules of trial.

Jury, how waived

(4578) § **1**. The trial by jury may be waived by the parties, in all actions in the following manner:

First. By failing to appear at the trial.

Second. By written consent in person, or by attorney, filed with the clerk.

Third. By oral consent in open court, entered on the record.

Special findings by court.

(4579) § **2**. Upon trials of question of fact by the court, it shall be necessary for the court to state its finding, except generally for the plaintiff or defendant, unless one of the parties request it, with a view of excepting to the decision of the court upon the questions of law involved in the trial; in which case, the court shall first state the facts in writing, and then the conclusions of law upon them, and judgment shall be rendered accordingly. And whenever any issue of law or fact is submitted to the court for trial, and the judge shall take the same under advisement, the judge shall not, except in case of severe illness of himself or family, hold the same under advisement for more than sixty days; and, if the court wherein said issue arose be not then in session, he shall file his determination therein, in writing, with the papers in the case.

Rules of trial.

(4580) § **3**. The provisions of this chapter respecting trials by jury apply, so far as they are applicable, to trials by the court.

ARTICLE 20.—TRIAL OF AGREED CASES.

SECTION.
1. Agreed cases, affidavit
2 Record.
3. Judgment, how enforced, costs.

Agreed cases, affidavit.

(4581) § **1**. Parties shall have the right in all cases, either with or without process, by agreement to that effect, to submit any matter of controversy between them to the court that would otherwise have jurisdiction of such cause, upon an agreed statement of facts, to be made out and signed by the parties; but it must appear by affidavit that the controversy is real and the proceedings in good faith, to determine the rights of the parties; whereupon the court shall proceed to try the same, and render judgment as in other cases.

Record.

(4582) § **2**. The statement of the case, the submission and the judgment shall constitute the record.

Judgment how enforced, costs

(4583) § **3**. The judgment may be enforced in the same manner as if it had been rendered in an action; and in like manner shall be with costs, subject to an appeal, unless otherwise provided in the submission.

SECTION.
1. What may be referred.
2. Manner of trial and finding.
3. How appointed
4. Referees, compensation of.

(4584) § **1.** All or any of the issues in the action, except in actions for divorce and for the nullification of marriage whether those issues be of fact or of law, or both, may be referred: What may be referred.

First. Where the trial involves the examination of accounts, and the items controverted by the pleadings are numerous.

Second. In any other civil action upon peremptory order of the court, or by accounts of parties in open court, or by stipulation filed in the office of the clerk.

Third In all actions where a jury have twice disagreed a reference shall be made.

(4585) § **2.** The trial by referees is conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments as the court may upon such trial. If required, they must state the facts found and the conclusions of law separately and their decisions must be given and may be excepted to and reviewed in like manner. Manner of trial and finding.

(4586) § **3.** In all cases of reference, the parties may agree upon a suitable person or persons not exceeding three, and the reference shall be ordered accordingly; and if the parties do not agree, the court shall appoint one or more referees, not exceeding three who shall be free from exception. How appointed

(4587) § **4.** The referee or referees, shall each receive such compensation as the court shall direct, to be paid by the prevailing party before the report is filed, and recorded as costs in the action. Referees, compensation of

ARTICLE 22.—NEW TRIAL.

SECTION.
1 Causes for.
2. Small damages no grounds
3. Motion, when made.
SECTION
4. Manner of applying.
5. Causes discovered after term.

(4588) § **1.** A new trial may be granted in the following cases: Causes for.

First. Irregularity in the proceedings of the court, jury, or prevailing party, or any order of court, or abuse of discretion, by which the party was prevented from having a fair trial.

Second. Misconduct of the jury or prevailing party.

Third. Accident or surprise, which ordinary prudence could not have guarded against.

Fourth. Excessive damages.

Fifth. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract or for the injury or detention of property.

Sixth. That the verdict or decision is not sustained by sufficient evidence, or is contrary to law.

Seventh. Newly discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial.

Eighth. Error of law occurring at the trial and excepted to by the party making the application. And the court in granting new trials, may allow the same at the costs of the party applying therefor, or on the costs abiding the event of the suit, or a portion of the costs, as the justice and equity of the case may require, taking into consideration the causes which may make such new trial necessary.

Small damages no ground.

(4589) § **2**. A new trial shall not be granted on account of the smallness of the damages in actions for an injury to the person or reputation, nor any other action where the damages shall equal the actual pecuniary loss sustained.

Motion, when made.

(4590) § **3**. The application for a new trial may be made at any time during the term at which the verdict or decision is rendered; and if the verdict or decision be rendered on the last day of the session of any court, or on the last day of any term, then on the first day of the next term of such court, whether general, special or adjourned.

Manner of applying.

(4591) § **4**. The application must be by motion upon written cause filed at the time of making the motion. The cause mentioned in the second, third and seventh clauses of section 4588 must be sustained by affidavit showing their truth.

Causes discovered after term, limit.

(4592) § **5**. Where causes for new trial are discovered after the term at which the verdict or decision was rendered, the application may be made by a complaint filed with the clerk, not later than the second term after the discovery, on which a summons shall issue, as on other complaints, requiring the adverse party to appear and answer. The application shall stand for hearing at the term to which the summons is returned executed, and shall be summarily decided by the court upon the evidence produced by the parties. But no such application shall be made more than one year after the final judgment was rendered.

SECTION.
1. On general verdict.
2. On special verdict.
3. On pleadings, notwithstanding verdict.
4. When plaintiff is barred as to part.
5 Against part of plaintiffs or defendants.
6. Against defendants, when joint or several.
7. Defendants all served, judgment against part only.
8 Set-off, judgment for excess.
9. Judgment in replevin.
10. Proof and assessment on default.
11 On mortgage or lien final.
12. In foreclosure, sale ordered.
13. Without relief, when separate.
14. Against officers, when without relief or stay.
15 On bonds, when without relief.
16. Entry, what it shall specify.
17 Satisfaction.
18 Endorsement of payment on record, etc., effect.
19. Judgment docket, contents.
20. Entry of stay of execution.
21. Record open to all.
22. Neglect of clerk to enter judgment, etc., liability.
23. Who may confess judgment.
24 Debt how stated, release of error.
25 Confession by attorney, affidavit.
26. Non-resident to file cost bond.
27. Costs.

SECTION.
28. Costs how apportioned.
29. When suits can be joined, costs in one only.
30. When costs adjudged before final judgment.
31. Costs of transcript
32. Fee bills.
33. Except divorce, when opened.
34. Notice of application.
35. Bona fide purchaser not affected.
36 How assigned.
37. Payment to assignor, when valid.
38. Execution, when issued and indorsed.
39. Assignee may maintain action
40 Delivery bond; suit on judgment.
41. Lien upon real estate, ten years.
42. Transcript to another county.
43. Lien of such judgment.
44. Transcript from justice.
45. Recording, docketing, lien.
46. Execution, how obtained.
47. Review of, by whom, exception.
48. For what had, limit of filing.
49. For new matter, verified, contents.
50 Stay; bond.
51. Notice of filing, issue.
52. Judgment, costs.
53. Death of judgment debtor; heirs, etc.
54. Affidavit of judgment-debtor.
55. Service of summons, issue; trial, order.
56. Death of one joint judgment debtor.

(4593) § **1**. When a trial by jury has been had, and a general verdict rendered the judgment must be in conformity to the verdict. On general verdict.

(4594) § **2**. Where the verdict is special, or where there has been a special finding on particular questions of fact, the court shall render the proper judgment. On special verdict.

(4595) § **3**. When upon the statements in the pleadings, one party is by law entitled to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party. On pleadings, notwithstanding verdict.

(4596) § **4**. In actions against two or more defendants, where the plaintiff is barred by the provisions of this act as to one or more of the defendants, and is entitled to recover against others for any cause, judgment shall be rendered against those liable and not for those not liable. Where plaintiff is barred as to part.

(4597) § **5**. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves. Against part of plaintiffs or defendants.

(4598) § **6**. In a suit against several defendants, the court may, in its decision, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper. Against defendants, when joint or several.

Defendants all served, judgment against part only.

(4599) § **7**. Though all the defendants have been summoned, judgment may be rendered against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them severally,

Set-off, judgment for excess

(4600) § **8**. If a set-off established at the trial exceed the plaintiff's claim so established, judgments shall be rendered for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment may be given therefor.

Judgment in replevin.

(4601) § **9**. In an action to recover the possession of personal property, judgment for the plaintiff may be for the delivery of the property, or the value thereof in case a delivery cannot be had, and damages for the detention. When the property has been delivered to the plaintiff and the defendant claims a return thereof, judgment for the defendant may be for the return of the property, or its value in case a return cannot be had, and damages for the taking and withholding of the property.

Proof and assessment on default.

(4602) § **10**. If the taking of an account, or the proof of a fact, or the assessment of damages is necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may take the accounts, hear the proof and in actions founded on contract, assess the damages, or may refer the same to a commissioner, or may direct the same to be ascertained or assessed by a jury.

On mortgage or lien final

(4603) § **11**. It shall not be necessary in any action upon a mortgage or lien to give time for the payment of money, or for doing any other act, but final judgment may, in such cases, be given in the first instance.

In foreclosure, sale ordered.

(4604) § **12**. In the foreclosure of a mortgage, the sale of the mortgaged property shall in all cases be ordered.

Without relief, when separated.

(4605) § **13**. When a judgment is to be executed without relief from appraisement laws, it shall be so ordered in the judgment. When the plaintiff has included in one action demands subject to the appraisement laws with demands made payable without any relief from appraisement laws, the court may render separate judgments upon such demands.

Against officers, when without relief or stay

(4606) § **14**. Hereafter all judgments recovered against any sheriff, constable, or public officer, administrator, executor, or any other person or corporation, or the sureties of any or either of them, for money collected or received in a judiciary capacity; or for a breach of any official duty; or for money or other article of value held in trust for another, shall be collectable without stay of execution or benefit of the violation or appraisement laws of this Territory.

On bonds, when without relief.

(4607) § **15**. Hereafter all judgments recovered upon bonds, written undertakings, or recognizances executed in any legal proceedings, civil or criminal, shall be collectable without relief from valuation or appraisement laws of the Territory of Oklahoma.

Entry what it shall specify.

(4608) § **16**. The judgment must be entered on the order book, and specify clearly the relief granted or other determination of the action.

Satisfaction.

(4609) § **17**. Satisfaction of a judgment or credits thereon may be ordered, for sufficient cause, upon notice and motion.

Indorsement of payment on record, etc., effect.

(4610) § **18**. Every indorsement of payment, satisfaction, or release in whole or part, upon the record or margin thereof of any judgments or decree, or upon any execution or order of sale issued thereon, signed by the judgment-plaintiff or his attorney-in-fact; or by the assignee of such judgment-plaintiff (whose assignment is upon or annexed to the record of such judgment or decree and attested by the clerk,) when attested by the clerk upon the record of such judgment or decree; or by the sheriff upon such execution or order of sale,—shall operate as a satisfaction or release of such judgment or decree, or of such part thereof so indorsed as paid, satisfied, or released in favor of subsequent purchaser or lien holders in good faith. And when such satisfaction, payment, or release is entered by the attorney-in-fact shall be noted on the margin of the record or the execution, as the case may be; and such power of attorney thall be recorded in the miscellaneous records of the recorder's office.

Judgment-docket, contents.

(4611) § **19**. The clerk of every court of record shall keep a docket in which he shall enter within, thirty days after each term of court in alphabetical order a statement of each judgment rendered at such term containing:

First. The names at length of all the parties.

Second. The amount of the judgment and costs and date of its rendition.

Third. If the judgment be against several persons, the statement shall be repeated under the name of each defendant in alphabetical order.

Entry of stay of execution.

(4612) § **20**. Recognizances of bail for stay of execution shall be entered in such docket immediately after the taking or return thereof, specifying the judgment and its amount, the date of recognizance and names of bail.

Record, open to all

(4613) § **21**. Such docket shall be a record, and open during the usual hours of transacting business to the examination of any person desiring it.

Neglect of clerk to enter judgment, liability

(4614) § **22**. Every clerk neglecting to enter judgment or recognizance, as herein required, shall be liable to any person injured for the amount of damages, sustained by such neglect, to be recovered in an action against the clerk alone, or upon his official bond against him and his sureties.

Who may confess judgment

(4615) § **23**. Any person indebted, or against whom a cause of action exists, may personally appear in a court of competent jurisdiction, and, with the consent of a creditor or person having such cause of action, confess judgment thereof; whereupon, judgment shall be rendered accordingly.

Debt, how stated, release of error.

(4616) § **24**. The debt or cause of action shall be briefly stated in a writing to be filed and copied into the judgment. The confession shall operate as a release of errors.

Confession by attorney, affidavit.

(4617) § **25**. Whenever a confession of judgment is made by power of attorney or otherwise, the party confessing shall, at the time he executes such power of attorney or confesses judgment, make affidavit that the debt is just and owing, and that such confession is not made for the purpose of defrauding his creditors. The affidavit shall be filed with the court.

Non-resident o file cost-bond.

(4618) § **26**. Plaintiffs who are not residents of this Territory, before commencing any action, shall file in the office of the clerk a written undertaking, payable to the defendant, with surety to be approved by the clerk for the payment of all costs which may accrue in the action to the proper officer or person; but the suit shall not be dismissed for want thereof; if the plaintiff will file in open court, upon being ordered to do so, such undertaking, which shall include all previous costs, the sureties shall be liable in the first instance as parties.

Costs.

(4619) § **27**. In all civil actions the party recovering judgment shall recover costs, except in those cases in which a different provision is made by law.

Costs, how apportioned.

(4620) § **28**. In actions where there are several plaintiffs or several defendants, the cost shall be apportioned according to the judgment rendered; and where there are several causes of action embraced in the same complaint, or several issues, the plaintiff shall recover costs upon the issues determined in his favor and the defendant shall recover costs upon the issues determined in his favor.

When suits can be joined, costs in one only

(4621) § **29**. When the plaintiff shall at the same court, bring several actions against the defendant upon demands which might have been joined in one action, he shall recover costs only in one action, unless it shall appear to the court that the actions effect different rights of interests, or other sufficient reasons exist why the several demands ought not to have been joined in one action.

When costs adjudged before final judgment.

(4622) § **30**. Whenever in any action an order shall be made for the payment of any costs at any time before final judgment, the court shall, upon motion of any person interested, render judgment for the costs in favor of the party entitled to receive the same.

Costs of transcript.

(4623) § **31**. When in any suit pending in this Territory, it shall be necessary to procure a transcript of any judgment or proceeding, or exemplification of any record as evidence in such action, the necessary expense of procuring such transcript or exemplification shall be taxed as other costs in the cause and recovered as in other cases.

Fee-bills.

(4624) § **32**. Fee bills and executions may issue for the collection of costs in the proper cases against parties to the action, relators, persons for whose use an action is brought and sureties on undertakings for the payment of costs.

Except divorce when opened.

(4625) § **33**. Parties against whom a judgment has been rendered without other notice than the publication in the newspaper herein required, except in cases of divorce, may at any time within five years after the rendition of the judgment, have the same opened and be allowed to defend.

Notice of application.

(4626) § **34**. Before any judgment shall be opened such party shall give notice to the original complainant, or his heirs, devisees, executors, or administrators, of his intention to make application to have the judgment opened as the court, in term, or the judge thereof in vacation, shall require; and shall file a full answer o the original complaint and an affidavit stating that, during the

pendency of the action, he received no actual notice thereof in time to appear in court and object to the judgment; and shall also pay all such costs of action as the court shall direct.

Bona fide purchaser not effected.

(4627) § **35**. If any property which was the subject of, or property sold under any judgment sought to be opened, as provided in the last two preceding sections, shall have passed into the hands of a purchaser in good faith, he shall not be affected by any proceedings consequent upon the opening of the judgment.

How assigned.

(4628) § **36**. Judgments and decrees of a court of record for the recovery of money, and judgments obtained before a justice of the peace, may be assigned by the plaintiff or complainant, and the assignees thereof successively, on or attached to the entry of such judgment or decree; and the assignment, when attested by the clerk of the court or such justice of the peace, shall vest the title to such judgment or decree in each assignee thereof successively.

Payment to assignor, when valid

(4629) § **37**. Payments or satisfaction on such judgment or decree to the assignors shall be valid, if made before notice of assignment to the judgment debtor, but not otherwise.

Execution, when issued and indorsed

(4630) § **38**. In case of assignment, execution shall issue in the name of the original plaintiff or complainant, but shall be indorsed by the clerk or justice, to be for the use of the assignee.

Assignee may maintain action.

(4631) § **39**. Any action which the plaintiff or complainant in such judgment or decree might have thereon may be in the name of the assignee.

Delivery-bond, suit on judgment.

(4632) § **40**. Bonds for the delivery of property levied upon by virtue of such execution shall be to the judgment-plaintiff, for the use of such asignee; and all suits and proceedings relating to such judgment or decree, or against any officer on his bond for neglect of duty relating thereto, may be against, or on relation, or for the use of such assignee, as the case may require.

Lien upon real estate

(4633) § **41**. All final judgments in the courts of record for the recovery of money or costs shall be a lien upon real estate and chattels real, liable to execution in the county where judgment is rendered, for the space of five years after the rendition thereof, and no longer, exclusive of the time during which the party may be restrained from proceeding thereon by any appeal or injunction, or by the death of the defendant, or by agreement of the parties entered of the record.

Transcript to another county.

(4634) § **42**. It shall be the duty of the clerk of any court of record of this Territory, rendering any judgment, to make out a certified copy thereof, under the seal of such court at the request of any person interested; which copy may be filed in the office of the clerk of any district court of this Territory, and when so filed shall be recorded and entered in the judgment docket in the same manner as judgments rendered in any such court.

Lien on such judgment.

(4635) § **43**. Such judgment, from the time of filing the copy aforesaid, shall be a lien upon all real estate, including chattels real, of the judgment-debtor, situated in the county where filed, as fully as if such judgment had been rendered thereon.

Transcript from justice.

(4636) § **44**. It shall be the duty of every justice of the peace in this Territory, when requested, by the plaintiff or his

agent, to make out and certify a true and complete transcript of the proceedings and judgment in any cause upon any docket legally in his possession. The plaintiff may file such transcript in the office of the clerk of any court in this Territory.

Recording, docketing, lien.

(4637) § **45**. It shall be the duty of the clerk forthwith, to record the transcript in the order-book, and docket the judgment in the judgment-docket. The judgment set forth in the transcript shall be a lien upon the real property of the defendant within the county, to the same extent as judgments of the court, from the time of filing the transcript.

Execution, how obtained.

(4638) § **46**. Whenever the plaintiff shall also procure from the justice a certificate that an execution has been issued upon the judgment to the proper constable, and by him returned, indorsed that no goods or chattels could be found sufficient to satisfy the judgment or a part thereof, and file the certificate with the clerk, he shall record it in the order-book with the transcript, and, upon the plaintiff or his agent also filing with the clerk his affidavit that the judgment is unpaid in whole or in part, stating the amount dne, he shall issue an execution upon the judgment, and indorse the amount to be levied of principal, interest and cost; which execution shall be issued, served and returned in the same manner as executions issued upon the judgment of the court.

Review of, by whom, exception,

(4639) § **47**. Any person who is a party to a judgment or the heirs, devisees, or personal representatives of a deceased party, may file in the court where such judgment is rendered a complaint for a review of the proceedings and judgment. Any person under legal disabilities may file such complaint at any time within one year after the disability is removed. But no complaint shall be filed for a review of a judgment of divorce.

For what had, limit of filing.

(4640) § **48**. The complaint may be filed for any error of law appearing in the proceedings and judgment and within one year, or for material new matter discovered since the rendition thereof, within three years; or for both causes, within one year after the rendition of the judgment, end without leave of court.

For new matter, verified, contents.

(4641) § **49**. When the complaint for a review is filed for new matter discovered since the rendition of the judgment, it shall be verified by the complainant, and show that new matter could not have been discovered before judgment by reasonable diligence, and that the complaint is filed without delay after the discovery.

Stay, bond.

(4642) § **50**. At any time after filing the complaint, and before the final hearing the court may, upon application of the plaintiff, stay all further proceedings on the judgment. When proceedings are stayed, the court shall direct bond and sureties to be given as in case of appeal.

Notice of filing, issue

(4643) § **51**. The defendant shall be notified of the filing of such complaint, and the parties shall proceed to form issues of law and fact as in other cases.

Judgment, costs.

(4644) § **52**. Upon the hearing, the court may reverse or affirm the judgment in whole or in part, or modify the same as the justice of the case may require and award costs according to the rule prescribed for the awarding of costs in the Supreme Court, on appeal.

(4645) § **53**. In case of the death of any judgment debtor, the heirs, devisees, or legatees of such debtor, or the tenant of real property owned by him and effected by the judgment, and the personal representatives of the decedent, may, after the expiration of one year from the time of granting letters testimentary or of administration upon the estate of the decedent be summoned to show cause why the judgment should not be enforced against the estate of the judgment debtor in their hands respectively.

Death of judgment-debtor, heirs, etc.

(4646) § **54**. The judgment-creditor, his representatives or attorney, shall file an affidavit that the judgment has not been satisfied, to his knowledge, or information and belief, and shall specify the amount due thereon, and the property sought to be charged.

Affidavit by judgment-creditor.

(4647) § **55**. A summons shall be issued, served, and returned, or publication may be made, as in other cases; issues shall be formed and tried as an original suit and the court shall order the property of the decedent in the hands of the heirs, devisees, or legatees, or in the hands of the tenant of real property, to be sold to pay the judgment and costs in the manner required by the judgment.

Service of summons, issue, trial, order.

(4648) § **56.** When two or more persons shall be jointly liable on a contract or a judgment, and either of them shall die, his estate, executors and administrators, shall be liable for the failure to perform the contract and for the payment of the judgment, to the same extent and in the same manner as if such contract or judgment were joint and several.

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Exception defined.

(4649) § 1. An exception is an objection taken to a decision of the court upon a matter of law.

Time of excepting, bill proviso.

(4650) § 2. The party objecting to the decision must except at the time the decision is made; but time may be given to reduce the exception to writing, but not beyond the term, unless by special leave of the court. It shall not be necessary to copy a written instrument or any documentary evidence into a bill of exception, but it shall be sufficient to refer to such evidence, if its appropriate place be designated by the words "here insert:" *Provided*, That if a motion for a new trial shall be filed in a cause in which decision, so excepted to, is assigned as a reason for a new trial, such motion shall carry such decision and exception forward to the time of ruling on such motion, and time may be then given by the court within which to reduce such exception to writing.

Form of exception

(4651) § 3. No particular form of exception is required. The objection must be stated, with so much of the evidence as is necessary to explain it, and no more, and the whole as briefly as possible.

Exception records, now noted.

(4652) § 4. Where the decision objected to is entered on the record, and the grounds of the objection appear in the entry, the exception may be taken by the party causing it to be noted at the end of the decision that he excepts.

Bill, how signed and filed, entry.

(4653) § 5. When the record does not otherwise show the decision or grounds of objection thereto, the party objecting must, within such time as may be allowed, present to the judge a proper bill of exceptions, which, if true, he shall promptly sign and cause it to be filed in the cause; if not true the judge shall correct, sign, and cause it to be filed without delay. When so filed it shall be a part of the record; and delay of the judge in signing and filing the same, shall not deprive the party objecting of the benefit thereof. The date of the presentation shall be stated in the bill of execptions, and the entry shall show the time granted if beyond the term, for presenting the same.

Questions of law, how reserved.

(4654) § 6. Either party may reserve any question of law decided by the court during the progress of the cause, for the decision of the Supreme Court. Any question of law so reserved may be taken to the Supreme Court upon the bill of exceptions showing the decision, or, if it arises on demurrer, upon the pleadings involved. When the question so reserved is shown by the bill of exceptions, the party excepting shall notify the court that he intends to take the question of law to the Supreme Court upon the bill of exceptions only; and the court shall thereupon cause the bill of exceptions to be so made that it will distinctly and briefly embrace so much of the record of the cause only and the statement of the court, as will enable the Supreme Court to apprehend the particular question involved.

Time for appeal, supercedeas

(4655) § 7. The party excepting may take the reserved question to the Supreme Court by appeal, at any time within one year after the final judgment in the cause, and not afterward. The appeal in such case shall not stay proceedings upon the judgment, unless so ordered by the Supreme Court or some judge thereof.

(4656) § **8.** Appeals may be taken from the district courts to the Supreme Court, by either party, from all final orders and judgments.

Appeals to Supreme court, proviso.

(4657) § **9.** Appeals in all cases hereafter tried must be taken within one year from the time the judgment is rendered. In all cases heretofore tried they must be taken within one year from the time this act takes effect; but the time allowed the appellant by the pre-existing law shall not be enlarged. Where the appellant is under legal disabilities at the time the judgment is rendered, he may have his appeal at any time within one year after the disability is removed.

Appeal within one year, exception.

(4658) § **10.** The Supreme court, upon being satisfied that the statute of limitations has barred a part only of the appellants, may strike the names from the record, and proceed to affirm, or reverse, or modify the judgments as to those appellants only who are before the court.

Part only barred, proceedings.

(4659) § **11.** A part of several co-parties may appeal; but in such case, they must serve notice of the appeal upon all the other co-parties, and file the proof thereof with the clerk of the Supreme Bourt. Unless they appear and decline to join, they shall be regarded as having joined, and shall be liable for their due proportion of the costs. If they decline to join, their names may be struck out on motion; and they shall not take an appeal afterward, nor shall they derive any benefit from the appeal, unless from the necessity of the case, except persons under legal disabilities.

A part may appeal, notice.

(4660) § **12.** In case of the death of any or all the the parties to a judgment before an appeal is taken, an appeal may be taken by, and notice of appeal served upon, the persons in whose favor and against whom the action might have been revived, if death had occurred before judgment.

Death of party, appeal, notice.

(4661) § **13.** The death of any or all parties shall not cause the proceedings to abate; but the names of the proper persons being substituted, upon consent or upon notice, the cause may proceed.

Death no abatement.

(4662) § **14.** When an appeal is taken during the term at which judgment is rendered it shall operate as a stay of all further proceedings on the judgment, upon an appeal bond being filed by the appellant, with such penalty and surety as the court shall approve, and within such time as it shall direct, payable to the appellee, with condition that he will duly prosecute his appeal and abide by and pay the judgment and costs which may be rendered or affirmed against him; and if the appeal is taken from a judgment of real property, or the possession thereof, by the party against whom the judgment for the recovery is rendered, then the condition of the bond shall further provide, that the appellant shall also pay all damages which may be sustained by the appellee for the mesne profits, waste or damage to the land during the pendency of the appeal; and if from a judgment for the recovery or return of personal property, or for such property or its value, then that if he deliver or return the property he will also pay the reasonable value of its use and any damage it may sustain during the

Appeal during term, stay bond, transcript.

pendency of an appeal. The transcript shall be filed in the office of the clerk of the Supreme Court within sixty days after filing the bond.

Failure to file record, execution, proviso

(4663) § **15**. In all cases appealed to the Supreme Court, where bond shall have been filed in the court below in term and execution therein stayed, and the appellants shall fail to file in the office of the clerk of the Supreme Court the record of the cause so appealed within the time required by law, the party in whose favor the judgment may be in the court below may have execution thereon upon filing with the clerk of the proper court the certificate of the clerk of the Supreme Court showing that said record was not so filed in proper time: *Provided, however*, That nothing in in this section shall be so construed as to prevent any such appellant from filing the transcript and perfecting an appeal afterwards according to law.

Appeal after term, notice, filing

(4664) § **16**. After the close of the term at which the judgment is rendered, an appeal may be taken by the service of a notice in writing, on the adverse party or his attorney, and also on the clerk of the court in which the proceedings were had, stating the appeal from the judgment or some specific part thereof; or such appeals may be taken by procuring from the clerk of the court a transcript of the record and proceeding in the suit, or so much thereof as is embraced in the appeal, and filing the same in the office of the clerk of the Supreme Court, who shall endorse thereon the time of filing, and issue a notice of the appeal to the appellate.

Appeal after term, bond, supercedeas

(4665) § **17**. An appeal taken after the close of the term shall not stay executuion or other proceedings in the court below, unless an order to that effect be granted by the Supreme Court, in term, or any judge thereof in term or vacation, which shall be indorsed on the transcript. The court or judge, shall, at the time of making the order, direct that the appellant shall give bond to the appellee, with condition as required when an appeal is taken during the term at which the judgment is rendered.

Bond, how appealed, stay

(4666) § **18**. The appeal-bond and surety may be approved be the clerk of the Supreme Court or by the clerk of the court below And upon the filing of the bond, execution and all other proceedings on the judgment in the court below shall be stayed; and if the execution has issued, the clerk shall notify the sheriff of the appeal and order to stay proceedings, and the execution shall be forthwith returned, and any levy made shall be relinquished

Certificate of stay to clerk below

(4667) § **19**. Whenever an order to stay execution of a judgment is granted, the clerk of the Supreme Court shall issue a certificate thereof to the clerk of the court below.

Length of stay

(4668) § **20**. Such order shall operate until the termination of the appeal, unless otherwise ordered by the court of a judge thereof.

Executors bond not required

(4669) § **21**. Executors, administrators and guardians, may have an appeal and stay of proceedings in the court below without giving an appeal.

When taken.

(4670) § **22**. Such appeal may be taken at the term of the court at which the order is made; or, when made in vacation, the

appeal may be taken at the time or during the next term. The appeal shall not be granted until the appellant has filed an appeal bond as in other cases of appeal.

Length of stay.

(4671) § **23**. Such appeal shall not stay proceedings upon the order more than thirty days, unless the Supreme Court in term, or some judge thereof, in term or vacation, shall otherwise order.

Transcript for appeal

(4672) § **24**. Upon the request of the appellant, or upon being served with notice as aforesaid, and, in either case, upon the payment of the proper fees, the clerk shall forthwith make out and deliver to the party, at his request, or transmit to the clerk of the Supreme Court, a transcript of the record in the cause, or so much thereof, as the appellant in writing directs certified and sealed, to which shall be appended the written directions of the appellant above contemplated, if any.

Transcript, certificate, when evidence omitted,

(4673) § **25**. All proper entries made by the clerk, and all papers pertaining to a cause, and filed therein (except a summons for the defendant, where all the persons named in it have appeared to the action, and summons for the witnesses depositions, and other papers which are used as mere evidence), are to be deemed parts of the record; but a transcript of motions, affidavits, and other papers, when they relate to collateral matters, and depositions; and papers filed as mere evidence shall not be certified, unless made a part of the record by exception or order of court, and directed to be certified by the appellant. Neither shall the clerk certify any pleading first filed, when there is an amended pleading of the same matter subsequently filed, embracing all the pleadings first filed; and the amendments thereto, but shall certify such amended pleading only. Every paper and pleading above excepted may be part of the record by the exceptions or order of the court, on motion. If the clerk should certify matter not material to the determination of the appeal to the Supreme Court may direct the person blamable therefor to pay the costs thereof: *Provided*, That when in any case an appeal is prosecuted upon the question of the correctness of instructions given or refused, or the modification thereof, it shall not be necessary to set out in the record all the evidence given in the cause, but it shall be sufficient in the bill of exceptions to set out the instructions or modifications excepted to, with a recital of the fact that the same were applicable to the evidence in the case.

Publication against non-resident.

(4674) § **26**. Whenever it shall appear to the Supreme Court, by satisfactory proof, that the appellee in a cause appealed after the close of the term is not a resident of this Territory and that a notice of an appeal cannot be served upon the attorney of the record in the court below, the court may order that notice of the pendancy of the appeal be given in some newspaper printed and published in this Territory, for three weeks successively, after which the court shall proceed in all respects as if the defendant had been served with process.

When appeal stands for trial.

(4675) § **27** Every appeal shall stand for trial at the first term of the Supreme Court after filing the transcript, when taken during the term of the court below, and in all other cases, when no-

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tice has been served ten days, or publication made thirty days before the first day of the term.

Docketing, order of hearing.

(4676) § **28**. The clerk shall docket all appeals in the order in which the transcripts are filed, and they shall be heard in the same order, unless the court, for good cause shown, direct a different mode of hearing.

Proceedings each day signed by chief judge.

(4677) § **29**. The proceedings of a court for every day of the term shall be drawn up at full length by the clerk against the next sitting of the court, and such corrections being made therein as shall be necessary and right, they shall be signed by the chief justice of the court.

Assignment of error, answer.

(4678) § **30**. No pleadings shall be required in the Supreme Court upon an appeal, but a specific assignment of all errors relied upon, to be entered on the transcript in law matters only, which shall be assigned on or before the first day of the term at which the cause stands for trial; and the appellee shall file his answer thereto.

Questions of fact how tried.

(4679) § **31**. All questions of fact to be determined in the Supreme Courts shall be tried according to rules to be adopted by the court.

Dismissal, effect of, new appeal.

(4680) § **32**. No appeal shall be dismissed for any informality or defect in the transcript or appeal bond, if the appellant shall correct the informality or defect within reasonable time. When an appeal has deen dismissed for want of prosecution, the court may reinstate it at the same time next term, good cause being shown. When any appeal has been dismissed, another appeal may be taken.

Defect in form, etc, no ground for reversal

(4681) § **33**. No judgment shall be stayed or reversed, in whole or in part, by the Supreme Court, for any defect in form, variance, or imperfections contained in the record, pleadings, process, entries, returns, or other proceedings therein, which by law might be amended by the court below, but such defects shall be deemed to be amended in the Supreme Court; nor shall any judgment be stayed or reversed, in whole or in part, where it shall appear to the court that the merits of the cause have been fairly tried and determined in the court below.

One judge interested, others divided, proceedings

(4682) § **34**. Whenever, on the hearing of an appeal, one of the judges of the Supreme Court has been of counsel in the cause, or is otherwise incompetent to participate in the decision, and the remaining judges are equally divided, the cause shall be continued to the next term; and if then the judges shall be equally divided, the judgment shall be affirmed without costs and in such case, each judge shall give his written opinion of each point in the case arising upon the record, which shall be reported among the cases decided by the Supreme Court.

Reversal, remanding for new trial, instructions.

(4683) § **35**. When the judgment is reversed, in whole or in part, the Supreme Court shall remand the cause to the court below, with instructions for a new trial, when the justice of the case requires it, but, if no new trial is required, with particular instructions relative to the judgment to be rendered and all modifications thereof. And whenever any cause is reversed in the Supreme Court, in whole or in part, on appeal and sent back for

such further proceedings as may require a trial, if the opinion and decision of the Supreme Court in such cause shall have been deposited in the office of the clerk of the district court, ten days or more before the first day of any term of such court, such cause shall stand for trial at such term; otherwise it shall be continued until the next term of such court.

Judgment of Supreme Court, damages.

(4684) § **36**. The Supreme Court may reverse or affirm the judgment below, in whole or in part, and remand the cause to the court below, and the court shall decide all errors assigned. Of the court affirm the judgment, damages may be assessed in favor of the appellee, not exceeding ten per cent upon the judgment in money judgments, and in any other cases in the discretion of the court; and the court shall remand such causes for execution.

Notice to clerk below, petition for rehearing

(4685) § **37.** When any cause is determined in the Supreme Court, the clerk shall forthwith notify the clerk of the court below that it is determined, and whether reversed or affirmed, in whole or in part, or dismissed. At any time within sixty days after such determination, either party may file a petition for a re-hearing; if not so filed, the decision and instructions of the Supreme Court shall be certified to the court below, unless otherwise ordered by the court.

Death no effect after submission.

(4686) § **38**. If the death of any or all the parties occur after the submission of the cause, judgment shall be rendered as at the term at which the submission was made, without any change of parties.

Costs

(4687) § **39**. When a judgment is affirmed in whole, the appellee shall recover costs, and when the judgment is reversed in whole, the appellant shall recover costs in the Supreme Court and the court below, to the time of the first error for which the judgment is reversed, which shall be pointed out in the opinion of the Supreme Court. In all other cases costs shall be awarded as the court may deem right, following, as nearly as possible, the general regulation for awarding costs.

Fee for transcript, etc

(4688) § **40**. The fee paid for procuring the transcript, the costs of serving the notice of appeal, and the printer's fee for publication are a part of the costs of the Supreme Court.

Execution from Supreme court, return.

(4689) § **41**. Executions issued from the Supreme Court shall be the same as those of other courts of record and shall be returnable as in other cases.

Money judgment, execution, when.

(4690) § **42**. In all cases appealed to the Supreme Court, where the judgment below has been for the recovery of money, and the same shall be fully and unconditionally affirmed in the Supreme Court, the clerk of the court below shall be authorized to issue execution on said judgment as soon as the certified copy of the opinion and judgment of the Supreme Court, so affirming said judgment, shall be filed in his office.

Order to inferior court for transcript and papers

(4691) § **43**. Any appellate court shall have full power to compel any inferior court, board, or officer exercising judicial functions or other person, to certify to such court a full and complete transcript of the records and proceedings of any such tribunal, board, officer, or person, and the production of any paper, whenever it shall be necessary for the proper determination of any cause or

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proceeding pending before the appellate court. The breach of any order may be punished as a contempt.

Reversal, effect upon title.

(4692) § **44.** The reversal of any judgment by virtue of which any real estate has been sold or transferred, or the titles thereto affirmed, shall not avoid the sale, transfer, or title, if the person to be affected thereby shall be, or claim under, a purchaser in good faith, and not a party to the record or attorney of any party.

Restitution impossible, remedy of defendant

(4693) § **45.** In every case of a sale, transfer, or confirmation of real estate upon execution or by judgment, where the defendant shall not have restitution of his estate, he shall be entitled to recover of the judgment-plaintiff the full value of the estate with interest, when the judgment-plaintiff has purchased the estate, or had the same confirmed or transferred to him; and when the land has been sold by the sheriff to any other person, he may recover the proceeds of the sale, with interest, deducting the amount applied to the costs of the judgment-defendant.

Restitution.

(4694) § **46.** In every other case of the reversal of any judgment, by virtue of which any real estate has been sold or transferred, or the title confirmed, the judgment-defendant shall have restitution thereof as follows:

Notice of motion for restitution

(4695) § **47.** He may notify the purchaser or his tenant, or other person in possession, that at the next term he will move the court which rendered the judgment to restore to him the possession of the premises.

Hearing and judgment.

(4696) § **48.** Upon proof that the notice has been served ten days, the court may proceed to hear and determine the issues made by the parties, and render judgment accordingly, or the judgment-defendant may recover his real estate by the ordinary action.

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Writs of.

(4697) § **1**. Writs of execution, as now used for the enforcement of judgments, are modified in conformity to this act, and any party in whose favor judgment has been heretofore or shall hereafter be rendered may, at any time within five years after the entry of judgment, proceed to enforce the same as provided in this act.

After five years, upon leave.

(4698) § **2**. After the lapse of five years from the entry of judgment or issuing of an execution, an execution can be issued only on leave of the court upon motion after ten days personal notice to the adverse party, unless he be absent or non-resident or cannot be found when service of notice may be made by publication, as in an original action or in such manner as the court shall direct Such leave shall not be given unless it be established by the oath of the party, or other satisfactory proof, that the judgment or some part thereof remains unsatisfied and due.

Three kinds of

(4699) § **3**. There shall be three kinds of executions—one against the property of the judgment debtor, one against his person, and one for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same; and executions may be issued to the sheriffs of different counties at the same time; but the plaintiff shall pay the costs upon all executions not necessary to the collection of his judgment.

Execution-docket, contents

(4700) § **4**. The clerk of every court of record shall keep an execution docket, in which he shall enter all executions as they are issued by him, specifying, in proper columns, the names of the parties, the amount of the judgment, and interest due at the issuing of the execution and costs, and prepare an additional column, in which he shall enter at length the return of the sheriff;

and such docket entries shall be taken and deemed to be a record.

Precipe for execution and fee-bill

(4701) § **5**. No execution shall, in any case, be issued on any cause, except on the written order of a party to such suit, his representatives or assigns, or of his attorney of record; and no fee-bill shall be issued, unless the same shall be ordered by the person to whom such fees, or a part thereof, are due, but the clerk shall receive nothing for any fee-bill issued for his own fees.

Judgments, how enforced.

(4702) § **6**. When a judgment requires the payment of money or delivery of real or personal property, the same shall be enforced in those respects by execution, as provided in this act. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced; if he refuse, he may be punished by the court as for contempt.

No execution against body or property.

(4703) § **7**. No execution against the body shall be issued while an execution against the property remains unreturned, nor shall an execution against the property be issued while there is an execution against the body unreturned

To whom issued

(4704) § **8**. When the execution is against the property or body of the judgment-debtor, it may issue to the sheriff of any county in the Territory. Where it requires the delivery of real or personal property, it must be issued to the sheriff of the county where the property, or some part thereof, is situated.

Requisites.

(4705) § **9**. The execution must issue in the name of the Territory, and be directed to the sheriff of the county, sealed with the seal, and attested by the clerk of the court. It must intelligibly refer to the judgment, stating the court where and the time when rendered, the names of the parties, the amount, if it be for money, and the amount actually due thereon, and shall require the sheriff substantially as follows:

First. If it be against the property of the judgment-debtor, it shall require the sheriff to satisfy the judgment out of the property of the debtor subject to execution.

Second. If it be against the real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment out of such property.

Third. If it be against the body of the judgment-debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of such county, until he shall pay the judgment, or be discharged according to law.

Fourth. If it be for the delivery of the possession of the real or personal property, it shall require the sheriff to deliver the possession of the same particularly describing it to the party entitled thereto; and may at the same time require the sheriff to satisfy any costs, damages, or rents and profits recovered by the same judgment out of the property of the party against whom it was rendered subject to execution, and the value of the property for which the judgment was recovered to be specified therein, if a de-

livery thereof cannot be had; and shall in that respect be deemed an execution against the property.

Time of return.

(4706) § **10.** The execution shall be returnable within one hundred and eighty days from its date.

When may issue on Sunday.

(4707) § **11.** An execution may be issued and executed on Sunday, whenever an affidavit shall be filed by the plaintiff, or some person in his behalf, stating that he will lose his judgment, as he has reason to fear and believe unless process issue on that day.

Indorsement of clerk on such writ.

(4708) § **12.** The clerk shall indorse on such execution that the defendants are not privileged from serving on Sunday.

Lien on property, when first levy preferred.

(4709) § **13.** When an execution against the property of any person is delivered to an officer to be executed, the goods and chattels of such person within the jurisdiction of the officer shall be bound from the time of delivery; but if there be several executions whether issued out of a court of record or by a justice of the peace, against the same defendant in the hands of different officers, that execution, without regard to the time of its delivery, under which the first levy is made shall have the preference, and all liens created by the prior delivery of any other execution shall be divested in favor of the execution first levied.

Sheriff's successor to execute writ, when.

(4710) § **14.** If the sheriff die or go out of office before the return of any execution, his successor, or other officer authorized to discharge the duties of the office in such case, shall proceed thereon in the same manner that the sheriff should have done.

Alias execution.

(4711) § **15.** The clerk, upon the return of an execution unsatisfied, shall issue another execution upon the judgment, and indorse thereon the amount of money levied by the former, if any.

To another county, lien from levy

(4712) § **16.** An execution against property issued to another county shall bind the real estate of the defendant from the time of the levy.

Stay of, time

(4713) § **17.** When judgment has been rendered against any persons for the recovery of money or sale of property, he may, by procuring one or more freehold sureties to enter into recognizance, acknowledging themselves bail for the defendant for the payment of the judgment, together with the interest and cost accrued and to accrue, have a stay of execution from the time of signing the judgment as follows:

First. If the sum for which the judgment was rendered, inclusive of costs, does not exceed six dollars for thirty days.

Second. If such sum and costs exceed six and do not exceed twelve dollars, sixty days.

Third. If such sum and costs exceed twelve and do not exceed twenty dollars, ninety days.

Fourth. If such sum and costs exceed twenty and do not exceed forty dollars, one hundred and twenty days.

Fifth. If such sum and costs exceed forty and do not exceed one hundred dollars, one hundred and fifty days.

Sixth. If such sum and costs exceed one hundred dollars, one hundred and eighty days.

Bail, how taken, its effect.

(4714) § **18**. The bail for stay of execution may be taken and approved by the clerk, and the recognizance entered of record at any time before the term of the stay of execution expires. The undertaking in the recognizance shall be for the payment of the judgment, interest, and costs that may accrue at or before the expiration of the term of the stay of execution. The recognizance shall be written immediately following the entry of the judgment, and signed by the bail.

Clerk to notify sheriff, return.

(4715) § **19**. When the bail is entered after execution is issued, the clerk shall immediately notify the sheriff of the stay, and he shall forthwith return the execution, noting his doings thereon.

Clerk's indorsement on replevial judgment,

(4716) § **20**. When execution issues for want of bail before the term for stay expires, the clerk shall indorse thereon the date of the judgment, and that the same is repleviable.

Stay for residue.

(4717) § **21**. In such cases the defendant may have a stay of execution for the residue of such term, by putting in bail, to be approved by the sheriff, and indorsed thereon, and signed by the bail.

Recognizance, where copied.

(4718) § **22**. The sheriff having taken the bail, shall immediately return the execution, with his doings thereon, to the clerk's office and the recognizance shall be copied by the clerk in the execution docket, and shall have the same force as if taken by the clerk.

Property levied on to be relinquished.

(4719) § **23**. All property levied on before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be relinquished by the officer upon bail for the stay of execution being entered.

Bail, effect of judgment confessed

(4720) § **24**. Every recognizance or bail, taken as above provided, shall have the effect of a judgment confessed, from the date thereof, against the person and property of the bail.

Joint execution.

(4721) § **25**. At the expiration of the stay it shall be the duty of the clerk to issue a joint execution against the property of all the judgment debtors and replevin bail; but the sheriff shall first levy upon the property of the judgment defendants, if sufficient can be found, if not he shall then without delay levy the execution upon the property of the bail. But no property of the bail shall be sold while property of the original judgment debtor, subject to the execution can be found in the county.

When stay not allowed, return limited

(4722) § **26**. No stay of execution shall be allowed upon any judgments recovered against any officer, person or corporation, or the sureties of any of them, for money received in a fiduciary capacity or for a breach of any official duty. The clerk shall issue executions upon such judgments forthwith, returnable in ninety days, and indorsed "not repleviable," and it shall be so ordered in the judgment.

Sureties may prevent stay, exceptions.

(4723) § **27**. When any court shall render judgment against two or more persons any of whom are sureties for any other or others in the contract on which the judgment is founded there shall be no stay of execution of the judgment if the sureties object at the time of rendering the judgment; and it shall be so ordered by the court, unless the bail for the stay of execution will under-

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When bail may have execution.

(4724) § **28.** Any bail for the stay of execution may file with the clerk an affidavit, stating that he verily believes he will be liable for the judgment, interest and costs thereon unless execution issue immediately, and the clerk shall thereupon issue execution forthwith, unless other sufficient bail be entered before the clerk or sheriff, as in other cases.

Entry of other bail, its effect.

(4725) § **29.** If other sufficient bail be entered, it shall have the force of the original bail entered before the filing of the affidavit, and shall discharge the original bill.

Exemption, six hundred dollars.

(4726) § **30.** An amount of property not exceeding in value six hundred dollars, owned by any resident house holder, shall not be liable to sale on execution or on any other final process from a court, for any debt growing out of, or founded upon a contract, express or implied, after the taking effect of this act.

Kind of property exempt

(4727) § **31.** The property may be real or personal, or both, as the debtor may elect and designate at the time he claims the exemption.

Selection of appraisers.

(4728) § **32.** For the appraisement of any property to be exempted under the provisions of this act, two disinterested house holders of the neighborhood shall be chosen, one by the plaintiff, his agent or attorney, and one by the execution debtor; and these two, in case of disagreement, shall select the third; and in case either party fails to select an appraiser the same shall be selected by the officer holding the execution.

Schedule and appraisement.

(4729) § **33.** Such appraisers shall proceed forthwith to make a schedule of the real and personal property selected by the debtor describing the real estate by metes and bounds. and the personal property by separate items, affixing to each the value they may agree upon; and they, or a majority, shall affix to the schedule so made an affidavit in substance as follows: "We, the undersigned, swear that, in our opinion, the above is a just valuation of the property herein described."

Return of officer, re-appraisement, costs.

(4730) § **34.** Such schedule shall be delivered to the officer holding the execution or other process, and shall be by him returned with such execution or other process, and made a part of such return: *Provided*, That all second or subsequent appraisments, under this act, shall be at the cost of the party or parties asking the re-appraisment, unless the property of the debtor, at the time of the re-appraisment, is appraised at enough over and above the legal exemption to meet said costs.

Debtor to pay appraiser's fee.

(4731) § **35.** Each appraiser, for his services, shall be allowed the sum of fifty cents, to be paid by the execution debtor.

Duty ot officer, when personalty only is claimed.

(4732) § **36.** If the debtor claim as exempt from execution personal property only, the officer holding the execution shall cause the same to be appraised and set apart to the debtor, and shall proceed to sell such other property, if any, as may be liable to the execution, according to law.

Duty when claim includes personalty and realty.

(4733) § **37.** If the claim of the debtor, as exempt from execution, include both real and personal property the officer holding the execution shall proceed to have the personal property appraised

and set apart to the debtor, and then to have the real property claimed appraised, and if the amount of both appraisements exceed six hundred dollars, the debtor may, within sixty days thereafter, pay the excess or an amount sufficient to satisfy the execution; but if he fail to do so, the officer shall proceed to sell the real property as other real property is sold on execution, if the execution authorize the sale of such property. In making the sale he shall receive no bid unless it exceed the difference between six hundred dollars and the appraisement of the personal property so set apart to the debtor. If the officer sell the real property, he shall pay over to the debtor the amount of said difference, and of the remainder apply upon the execution enough to satisfy it, and pay the balance, if any, to the debtor, or to such other party as may be entitled to it.

Duty, when claim is for realty only.

(4734) § **38**. If the debtor claim as exempt from the execution real property only, it shall be appraised; and if its appraised value exceed six hundred dollars, it shall be sold, if there is a bid for more than six hundred dollars. If sold, the officer shall pay to the debtor six hundred dollars and the remainder of the purchase money shall be disposed of as provided in the last preceding section.

Real property, how divided.

(4735) § **39**. In all cases in which real property is claimed as exempt from sale on execution, and said real property is susceptible of division by metes and bounds without material injury thereto, it shall be so divided as to exempt the principal dwelling house or homestead of the debtor.

Debtor must make and deliver schedule.

(4736) § **40**. Before a debtor shall receive the benefitof the exemption provided by law, he shall on demand make out and deliver to the officer holding the execution a schedule of all of his property as now required by law, in case an exemption from sale on execution is claimed.

Verified schedule required.

(4737) § **41**. Before any person shall be entitled to the benefit of the provisions of the exemption law he shall make out on demand and deliver to the sheriff or other officer having the writ, an inventory of all his or her real estate, within or without this Territory, money on hand or on deposit within or without this Territory, rights, credits and chooses in action, and all personal property of every description whatever belonging to him or in which he had any interest at the date of the issuing of the writ, and make and subscribe an affidavit to the same that such inventory contains a full and true account of all such property as required in this act to be set out in the said inventory, had or held by him at the time such writ was issued; and if any such property has been disposed of by him since the issuing ot the writ such affidavit shall allow that fact, and how the same has been disposed of, and what disposition he has made with the proceeds; and until such inventory and affidavit shall be furnished to such officer, he shall not set apart any property to the execution-defendant as exempt from execution.

Wife may act in husband's absence.

(4738) § **42**. In any case when the execution-defendant is absent from this Territory, or shall absent himself from his home, and an attachment or execution shall be directed against his prop-

erty, his wife may make out and verify the schedule of his property, and claim and receive for him the exemption provided in this act, and claim and exercise all rights which would belong to her husband were he present.

When husband's mortgage of realty invalid.

(4739) § **43**. No mortgage or sale of any real estate exempted under the provisions of this act shall be valid if executed by a married man, unless the mortgage or deed be signed and acknowledged by the wife in due form of law.

No exemption against mechanics' liers, etc.

(4740) § **44**. The exemption under this act shall not effect any laborer's or mechanic's lien, nor lien for the purchase money of the real property exempted; nor exempt any property from taxation or from sale for taxes.

Levy and offer to sell.

(4741) § **45**. When an execution against the property of any person is issued to the sheriff, he shall serve said execution upon the defendant or defendants in said county, and levy the same, if not paid, upon property and make at least one offer to sell property levied upon within sixty days after such execution comes to his hands, if property can be found, unless otherwise directed by the plaintiff or plaintiffs, or his or their agents.

Money may be levied on.

(4742) § **46**. Current coin and lawful money, and such bank notes as the plaintiff is willing to receive as money, may be levied upon and returned on execution, without sale as so much money collected.

Bills, notes, etc.

(4743) § **47**. Bills, notes, drafts and checks, or other evidences of debt, issued by any moneyed corporation or bank, or by this Territory or the United States and circulating as money, may be levied upon as personal property and sold on execution.

Goods pledged etc., subject to lien

(4744) § **48**. Goods and chattels liable to exemption, pledged, assigned, or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment, or mortgage, subject thereto, and the purchaser shall be entitled to the possession, upon complying with the conditions of the pledge, assignment, or mortgage.

Shares of stock, sheriffs duties and powers.

(4745) § **49**. Shares of stock in any corporation or company may be levied upon and sold in the county where the office and books showing the shares of stock and stockholders of the corporation or company are kept; and the sheriff shall transfer the stock subject to the rights of the corporation or company. The sheriff shall have access to the books of any corporation or company in his county, for the purpose of making the levy; and if refused access, the court shall enforce the right. The shares of stock subject to be levied upon shall be bound by the execution from the time of the levy; and when such levy is made, the sheriff shall leave the notice thereof with the officers of the company, and such levy shall constitute a lien upon the stock from the time of such levy.

Debt or thing in action, when given up.

(4746) § **50**. Any debt or thing in action, legally or equitably assignable, may be levied upon, when given up by the defendant, and sold on execution, in the same manner as other personal property.

Assigment thereof by sheriff, effect.

(4747) § **51**. The sheriff making the sale of any such debt or thing in action shall assign and deliver the same to the purchaser,

and the assignment shall have the same effect as if made by the execution-defendant at the time of making the levy thereon, and shall be treated as so made.

Pleading and proof in action thereon.

(4748) § **52**. In any action in which such assignment is declared upon or stated, it shall not be necessary to plead or prove any judgment or execution by virtue of which the assignment was made, nor to prove the execution of the assignment, unless the same be denied under oath.

First levy on property selected by debtor.

(4749) § **53**. When any execution shall issue against the real or personal property of any person, it shall be the duty of the sheriff to levy the same; first upon that part of the property designated by such person, if there be no reasonable doubt that he is the owner thereof, and if designated in time to enable the sheriff to levy and sell without unnecessary delay.

When none designated, levy general.

(4750) § **54**. If no property be thus designated, it shall be the duty of the sheriff to levy the execution upon any property of the debtor which can be found subject to the execution.

When insufficient, levy general.

(4751) § **55**. If the property thus designated be insufficient to satisfy the execution, the sheriff shall levy the same upon such other property subject to execution as can be most readily found sufficient in addition to the property designated, to satisfy the execution.

Personalty first sold, exception, debtor's residence.

(4752) § **56**. In all cases where the personal estate of the debtor subject to execution is insufficient to satisfy the execution, the real estate shall be exempt from levy and sale until the personal estate is levied upon and sold, unless the debtor shall direct otherwise; and the principal messuage, lands, or tenements of the debtor, or upon which he may reside, shall not be levied upon, unless other property cannot be found sufficient to satisfy the execution in the hands of the sheriff.

Further levies and sales

(4753) § **57**. If the property levied on shall not sell for a sum sufficient to satisfy the execution, the sheriff shall make a further and sufficient levy, if sufficient property can be found, and proceed as upon the first levy, and return his doings thereon.

Sale for two-thirds appraised value, exception.

(4754) § **58**. No property shall be sold on any execution or order of sale issued out of any court for less than two-thirds of the appraised cash value thereof, exclusive of the liens and incumbrances, except where otherwise provided by law.

Sheriff to ascertain cash value.

(4755) § **59**. The sheriff, immediately upon levying an execution, shall proceed to ascertain the cash value of the property levied upon.

Appraisers, selection, duties

(4756) § **60**. For that purpose two disinterested householders of the neighborhood where the levy is made shall be selected as appraisers, one of whom shall be selected by each of the parties or their agent; or, in the absence of either party or his agent, or upon the failure or refusal of either party, after three days notice by the sheriff, to make the selection, the sheriff shall proceed to select the appraisers. They shall forthwith proceed to appraise the property according to its cash value at the time, deducting liens and incumbrances; and in case of their disagreement as to the value, the sheriff shall select a like disinterested appraiser, and

with his assistance, shall complete the valuation; and the appraisement of any two of them shall be deemed the cash value.

Vacancy.

(4757) § **61**. In case any appraiser shall fail to act or to complete such valuation, another shall be chosen in his stead, as above provided.

Liens and incumbrances, list of.

(4758) § **62**. It shall not be the duty of the sheriff or appraisers to ascertain the amount of liens and incumbrances; but either party may furnish the sheriff with a list thereof, with the amount and nature of each.

Schedule and valuation.

(4759) § **63**. The sheriff shall furnish the appraisers a schedule of the property levied upon, with the incumbrances made known to him, and they shall proceed to fix and set down opposite to each tract, lot, or parcel of real estate, and of the several articles of personal property, the cash value, deducting liens and incumbrances; which schedule they shall return to the sheriff.

Oath of appraisers

(4760) § **64**. The appraiser shall take and subscribe an oath annexed to such appraisement, to the effect that the property mentioned in the schedule is, to the best of their judgment, worth the sums specified therein; that the same is a fair cash value thereof at the time, exclusive of liens and incumbrances; which oath the sheriff is authorized to administer and attest, when taken and subscribed by the appraisers.

Purchaser's privileges as to liens, proviso,

(4761) § **65**. Where any property shall be sold subject to liens and incumbrances, the purchaser may pay the liens and incumbrances, and hold the property discharged from all claims of the execution-defendant; or, he may hold the property subject to be redeemed by the execution-defendant, his heirs or assigns, by paying to the purchaser, his heirs or assigns, the purchase money, with interest. When redeemed, the purchaser shall have the growing crops and shall not be accountable for rents and profits, but he shall account for waste: *Provided*, That nothing contained in this section shall deprive a party from the right to redeem when authorized by statute.

Duty of sheriff as to unsold property.

(4762) § **66**. When any property levied on remains unsold, it shall be the duty of the sheriff, when he returns the execution, to return the appraisement therewith, stating in his return the failure to sell and the cause of the failure.

Lien of levy to continue, limit, new writ

(4763) § **67**. The lien of the levy upon the property shall continue; and the clerk, when directed by the plaintiff, shall forthwith issue another execution reciting the return of the former execution, the levy and failure to sell and directing the sheriff to satisfy the judgment out of the property unsold, if the same be sufficient; if not, then out of any other property of the debtor subject to execution; but such lien as to personal property shall continue only for thirty days (unless a second execution be issued thereon) from the time of said return, at which time it shall be released as to *bona fide* purchasers for value and as to levies of writs on other judgments, and the levy shall, as between the parties, be deemed vacated; and as to real property, after six month, the levy of such writ shall be discharged.

Re-offer, costs, re-valuation

(4764) § **68**. Whenever any property levied upon remains unsold for want of buyers, the plaintiff may cause the same to be

re-offered at any time before the return-day of the execution, at his costs, as often as he may direct; but in case of the sale of the property, the costs of such offer and sale shall be taxed against the defendant. Either party may have a re-valuation of the property, at his costs, after any offer to sell.

Fraud, sale without appraisement.

(4765) § **69**. The property conveyed to a debtor, with intent to hinder, delay, or defraud creditors, shall be sold without appraisement.

Delivery bond.

(4766) § **70**. Any personal property taken in execution may be returned to the execution-defendant by the sheriff, upon delivery by the defendant, to him of a written undertaking, payable to the execution-plaintiff, with sufficient surety, to be approved by the sheriff, to the effect that the property shall be delivered to the sheriff at a time and place named in the undertaking, to be sold according to law, or for the payment to the sheriff of the appraised value thereof, or when the same has not been appraised, then of the value of the same.

Appraisement, when pre-requisite,

(4767) § **71**. Before the sheriff shall deliver any part of the property to the defendant, he shall cause it to be appraised in the manner prescribed by law, when an appraisement thereof is required; and the defendant may sell or dispose of the property, paying the officer the full appraised value thereof.

Non-delivery, duty of sheriff.

(4768) § **72**. In case of the non-delivery of the property according to the undertaking, it shall be the duty of the sheriff to levy upon and sell the same or any other property of the defendant as soon as practicable, at any time before the return-day of the execution.

Return of forfeiture.

(4769) § **73**. Upon the forfeiture of the written undertaking, the officer shall forthwith return it, endorsed "forfeited," to the clerk's office for the use of the plaintiff.

Action on bond, damages.

(4770) § **74**. Such undertaking shall be valid in law and an action had thereon whenever the condition thereof is broken; and on recovery, the value of the property, so taken with damages not exceeding ten per cent on the value, shall be assessed in favor of the plaintiff. But the recovery shall not exceed the amount due on the execution, and ten per cent on the principal.

Execution without stay, return when.

(4771) § **75**. On judgment obtained on such written undertaking, execution will issue forthwith, without stay, returnable in thirty days; and the sheriff shall not return any property to the execution defendant levied on thereby except upon payment of judgment.

Notice of sale of personalty.

(4772) § **76**. Previous notice of the time and place of the sale of any personal property, on execution, shall be given for ten days successively, by posting up written notices thereof in at least three of the most public places in the township where the sale is to be made.

Personalty, how sold.

(4773) § **77**. Personal property shall not be sold unless the same shall be present and subject to the view of those attending the sale; and it shall be sold at public auction, in such lots and parcels as shall be calculated to bring the highest price.

Real estate liable to judgment, exception.

(4774) § **78**. Real estate other than the homestead shall be liable to all judgments and attachments, and to be sold on execu-

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tion against the debtor owning the same or for whose use the same is holden, viz.

First. All lands of the judgment debtor whether in possession remainder, or reversion.

Second. Land fraudulently conveyed with the intent to delay or defraud creditors.

Third. All rights of redeeming mortgaged lands; also all lands held by virtue of any land office certificate.

Fourth. Lands, or any state or interest therein, holden by any one in trust for or to the use of another.

Fifth. All chattels real of the judgment debtor.

Rents and profits first offered.

(4775) § **79.** The estate or interest of the judgment-debtor in any real estate shall not be sold on execution until the rents and profits thereof, for a term not exceeding seven years, shall have been first offered for sale at public auction; but if the same shall not sell for a sum sufficient to satisfy the execution, then the estate or interest of the judgment-debtor shall be sold by virtue of the execution.

How valued.

(4776) § **80.** Rents and profits may be sold as other property, the appraisers setting down the value of each year separately.

Manner of sale, lease by sheriff.

(4777) § **81.** So many years, not exceeding such term of seven, shall be sole as will satisfy the execution, and no more; and the sheriff shall execute a lease to the purchaser for the term sold.

Notice of sale of realty.

(4778) § **82.** The time and place of making a sale of real estate on execution shall be advertised by the sheriff for at least twenty days successively next before the day of sale, by posting up written or printed notices thereof in three public places in the township in which the real estate is situated, and a like advertisement at the door of the court house of the county and also by advertising the same for three weeks successively in a newspaper of general circulation, printed in the English language, and published in the county where the real estate is situate: *Provided*, That if the sheriff shall not be able to procure the publication of the notice in a newspaper of general circulation published within his county, it shall be lawful for him to dispense with the publication of the notice, and the land may be sold without such publication, and the sheriff shall in his return of the writ, state his inability to procure the publication and such return shall have the same effect in evidence as the official returns of sheriffs in other cases.

Damages against sheriff for breach of duty

(4779) § **83.** A sheriff who shall sell any real estate without giving the previous notice herein directed, or shall sell the same otherwise than in the manner herein prescribed, shall forfeit and pay to the party injured not less than ten nor more than two hundred dollars, in addition to such other damages as the party may have sustained, to be recovered from the sheriff, or from him and his sureties, in an action on his official bond.

Purchase by sheriff void.

(4780) § **84.** If any sheriff or his deputy making sale of property on execution shall, directly or indirectly, purchase the same, the sale shall be void.

Bidder not paying, liability.

(4781) § **85.** Whenever the purchaser of any property sold on

execution shall fail or refuse to pay the purchase money, he shall be liable, on motion to be made by the sheriff or the execution plaintiff or defendant, in the proper court, five days notice being given, to a judgment for the amount of the purchase money, and damages not exceeding ten per cent and interest, with costs; and no stay of execution shall be allowed upon the judgment.

Re-sale liability of first bidder.

(4782) § **86**. The sheriff may re-expose and sell the property on the same or any subsequent day, according to law, and if the amount bid at the second sale shall not equal the amount bid at the first sale and the costs of the second sale, the first purchaser shall be liable for the deficiency, and damages thereon not exceeding ten per cent and interest and costs, to be recovered by a like notice and motion as provided in the last section. In case he sells on a subsequent day, he shall re-advertise as in other cases.

Excess to debtor.

(4783) § **87**. When property shall be sold on execution for more than will satisfy the execution, including interest and costs, the sheriff shall pay the over-plus to the execution debtor of whom it was levied, or to his assigns, unless he be notified of the existence of liens to the payment of which it ought to be applied, and in that event he shall return the money, to be disposed of as the court shall direct.

Deed of sheriff.

(4784) § **88**. Upon the sale of real estate by virtue of an execution, and the payment of the purchase money, the sheriff making the sale, or in case of his death or going out of office, his successor or any officer authorized to discharge the duties of the office, shall execute and deliver to the purchaser a deed of conveyance for the premises, which shall be valid and effectual to convey all the right, title and interest of the execution debtor therein to the purchaser, except any right of redemption as provided by law.

Deed to heirs and devisees.

(4785) § **89**. In case the purchaser of any real estate upon execution having paid the purchase money therefor shall die before a deed of conveyance shall have been executed to him, the sheriff shall convey such real estate to the heirs or devisees of the deceased person.

Purchaser subrogated, when.

(4786) § **90**. If upon the sale of property, real or personal, the title of the purchaser is invalid as to all or any part of such property, by reason of any defect in the proceedings or want of title, the purchaser may be subrogated to the rights of the creditor against the debtor, to the extent of the money paid and applied to the debtors benefit; and where the judgment is entered satisfied in whole or in part by reason of such sale, such purchaser upon notice to the parties to the proceedings, and upon motion, may have such satisfaction of the judgment vacated in whole or in part. Such purchaser, when the proceedings are defective, or the description of the property sold is imperfect, shall also have a lien to the same extent on the property sold as against all persons except *bona fide* purchasers without notice; but this section shall not be construed to require the creditor to refund the purchase-money by reason of the invalidity of any such sale.

Certificate of purchase, contents, duplicate, etc.

(4787) § **91**. Whenever any real estate or interest therein shall be sold by the sheriff on execution or decretal order, he shall issue to the purchaser (or if the real estate be sold in parcels, to different purchasers, to each purchaser) a certificate of purchase. Such purchase shall show the court in which the judgment or decree was rendered, the parties thereto and date thereof the dates of the execution and sale, the name of the owner and purchaser, and price paid; and shall contain a particular description of the premises and the estate therein sold whether in fee, for life or for years; and shall state the time when the purchaser will be entitled to a conveyance of the property. The sheriff making such sale shall prepare and sign a duplicate of such certificate of purchase, and forthwith deliver it to the clerk of the district court of the county in which such real estate is situated. Such clerk shall immediately record the certificate in the "Lis Pendens Record" kept in his office. The certificate shall be assignable by the indorsement, and shall entitle the purchaser, his heirs, devisees, or assigns, to a conveyance of the estate in said real property bought by such purchaser, at the expiration of one year from the date of his purchase, unless the the same shall have been previously redeemed as hereinafter provided. Any assignment of such certificate duly acknowledged as in case of deeds, shall, together with the acknowledgment, be recorded by the clerk in the "Lis Pendens Record" at the request of the assignee, and on the payment or tender of the fees allowed therefor.

Owner entitled to possession for one year.

(4788) § **92**. The owner of the real estate or interest therein, sold as aforesaid, shall be entitled to the possession of the same for one year from the date of such sale.

Manner of redemptions, lis pendens entry.

(4789) § **93**. The real estate or interest therein sold as aforesaid, or any part thereof separately sold, may be redeemed at any time within one year from the date of such sale by the owner thereof, or by his executor or administrator under the direction of the court appointing him, or the judge thereof in vacation, or by his heirs or devisees, or by any one holding either the legal or equitable title, by paying to the clerk of the court in whose office such certificate of purchase is required to be recorded, for the use of the purchasers, his executors, administrators, or assigns, the amount of his purchase money, and interest at the rate of eight per cent per annum thereon from the date of his purchase; or if the premises shall have been previously redeemed by any person having a lien thereon, as hereinafter provided, then by paying to such clerk, for the use of the last redemptioner, the amount paid by him for the redemption, with interest at the rate of eight per cent per annum thereon and his costs of redemption. If the real estate has been sold in separate parcels by the sheriff, such owner or other person may redeem any separate parcel or parcels sold in one body, by paying to such clerk, for the use of such purchaser, the amount paid by him for such parcel or parcels, interest, and costs thereon as aforesaid; or if the real estate has been redeemed, in whole or in part, by a liener as aforesaid; then by paying to the clerk, for the use of the last redemptioner his redemption money, with interest and costs as aforesaid. Im-

mediately upon such redemption being made, the clerk shall make an entry in the "Lis Pendens Record," showing the date and amount of the redemption, by whom redeemed, the character in which he redeemed, as owner or otherwise, the particular parcel or parcels redeemed, and the judgment and execution, under which the sheriff's sale was made. If the execution upon which the sale was made issued from the court of a county other than that in which the real estate is situate, the clerk to whom such redemption money is paid shall make out, and deliver to the person redeeming, a certified copy of the entry aforesaid, who shall cause the same to be recorded by the clerk of the court from which such execution issued, who shall record the same in the "Lis Pendens Record" kept in his office, If any person other than the party owning the real estate at the time of the sale apply to the clerk to redeem, he shall file with the clerk an affidavit, showing the facts entitling him to redeem. If this right to redeem is based upon any record in the office of the clerk of any court in the county or of the recorder of the county in which the real estate is situate, it shall be sufficient to state in such affidavit the particular record, volume, and page where such record may be found. If such right is based upon some record kept in an office without such county, he shall file, with his affidavit, a duly certified copy of such record. The clerk shall note the date of filing such affidavit and copy, properly endorsed thereon, and preserve the same as part of the record of his office.

Undivided interest, how redeemed, lien.

(4790) § **94**. Any person having an undivided interest in the property sold may redeem such property, or any parcel or parcels thereof sold in one body, as provided in the foregoing section. And if he so redeem, he shall have a lien on the several shares of the other owners for their respective shares of redemption money, with interest at the rate of ten per cent per annum thereon, and his costs of redemption; which lien shall be superior to all liens on the real estate so redeemed, junior to the lien of the judgment under which the sale was made, and may be enforced against the other part owners and junior incumbrances by appropriate legal proceedings.

Redemption by owner vacates sale, re-sale when not allowed

(4791) § **95**. Whenever any real estate, interest therein, or parcel thereof, sold as aforesaid, shall be redeemed by the owner or any part owner or persons claiming under them as above provided, the sale thereof by the sheriff shall be wholly vacated as to the real estate, interest therein or part thereof redeemed, and the real estate, subject to sale on execution, as if such sale had not been made, saving to a part owner redeeming his lien as aforesaid. But whenever real estate or an interest therein has been sold by the sheriff as aforesaid, no re-sale thereof shall be had upon execution or decretal order issued upon any judgment or decree, junior in lien to that upon which the sale was made, within one year from the date of such sale, unless the same shall have been previously redeemed by the owner or part owner, or some one claiming under either, as above provided.

Owner failing, judgment-creditor may redeem.

(4792) § **96**. In the absence of a redemption as above provided, by any owner, part owner, or person claiming under either,

the real estate sold, or any parcel or parcels thereof sold in one body, may be redeemed at any time within one year from the date of sale, by any judgment-creditor, his executors, administrators, or assigns holding a judgment or decree against the defendant whose title or interest shall have been sold, which, at the time he or they offer to redeem, shall be a lien upon such title or interest, and which shall be junior to the judgment under which the property was sold. Such redemption made by any person entitled thereto, without regard to the order of priorities of liens, and successive redemptions may be made by the several persons entitled to redeem, in the manner hereinafter provided.

Manner of redemption by judgment-creditor.

(4793) § **97**. Any judgment-creditor authorized by the preceding section to redeem, who shall desire to redeem from the purchaser at such sale, shall first file with the clerk of the court in whose office the certificate of purchase is required to be recorded a statement, duly verified by his affidavit, or the affidavit of his agent or attorney, showing the court in which his judgment was rendered, the parties thereto, amount and date thereof, and amount due and unpaid thereon, and, if less than the whole, the parcel or parcels thereof which he desires to redeem and the sale from which he desires to redeem. He shall thereupon pay to such clerk, for the use of the purchaser, his executor, administrator, or assigns, the amount paid by such purchaser for the real estate or portion thereof sought to be redeemed, as shown by the record of the certificate of purchase in the "Lis Pendens Record" in the office of said clerk, and interest at the rate of eight per cent per annum thereon from the date of his purchase. Upon the receipt of the redemption money and interest, the clerk shall make out and sign a certificate showing the date and amount of the redemption, the land or part thereof redeemed, the judgment in right of which the redemption was made, and the execution under which the sale was made; and, after recording such statement, affidavit, and certificate "Lis Pendens Record" shall deliver such certificate to the redemptioner When such redemption has been made, any other judgment-creditor, entitled and wishing to redeem, may do so by filing with said clerk a statement and affidavit similar to those above provided for and containing, in addition, the name of the preceding redemptioner from whom he wishes to redeem, and the particular parcels he wishes to redeem. He shall thereupon pay to such clerk, for the use of the last preceding redemptioner, if the lien of the latter be junior to that of the party now redeeming, his redemption money and interest at the rate of eight per cent per annum thereon and costs of redemption; and if his lien be senior to that of the party seeking to redeem, he shall pay to the clerk, for the use of the aforesaid, the judgment of the last redemptioner on account of which his redemption was made and interest thereon and his costs of suit in addition to the amounts aforesaid; and thereupon such clerk shall issue to him a certificate similar to the one above provided for, and record the statement, affidavit, and certificate in the "Lis Pendens Record" aforesaid. Supsequent redemptions may be made by other judgment-creditors entitled to redeem, substantially in the manner and upon the

terms above provided; and when the redemption of any parcel is made from a prior redemption, the amount to be paid by the redemptioner shall be in the same proportion as provided in section 4790. When any person claims the right as the executor, administrator, or assignee of a judgment-plaintiff, to redeem, he shall file a verified statement of the facts, showing his right to redeem; and if his right to redeem is based upon records other than those in the office of the clerk where such redemption is made, he shall file certified copies of such records with his statement; all of which shall be properly endorsed and filed by the clerk.

Venditioni exponas by last redemption.

(4794) § **98**. If, during the year hereinbefore allowed for redemption, the real estate, or interest therein, sold by the sheriff, or any parcel or parcels thereof sold separately, shall be redeemed by any owner or part owner or by any person claiming under them, at the expiration of such year, the last redemptioner shall be immediately thereafter entitled to sue out an execution in the nature of a *venditioni exponas* upon his judgment, by virtue of which he made his redemption. Such execution shall recite the judgment upon which the original sale was made, naming the court wherein rendered, the parties thereto, the date and amount thereof the dates of the execution and sale, and name of the owner, the price paid by the purchaser or purchasers for the real estate, if sold in one body, or for each parcel thereof, if sold in parcels, or interest therein redeemed by said redemptioner, the amount paid by such redemptioner in redemption thereof, date of payment, and costs of redemption, and the judgment of said redemptioner, under which his redemption was made and amount due threon; which execution shall issue to the sheriff of the county in which such real estate is situate, commanding him to sell the real estate, interest therein, or parcels thereof, redeemed by said redemptioner, to the highest bidder; and after paying the costs of such sale, and paying to such redemptioner his redemption money and interest thereon at the rate of eight per cent per annum, and his cost of redemption, and the amount of principal, interest and costs due on his judgment, pay the residue into the office of the clerk issuing such execution. Such real estate shall be sold upon like notice as in other cases, but without offering the rents and profits, and without regard to appraisement laws, and if redeemed in parcels shall be offered in like parcels, and the redemptioner suing out such execution shall be deemed the bidder for the amount paid by him in redemption thereof, and interest thereon at the rate of eight per cent per annum, his costs of redemption and the costs of sale, and if no one bid more, he shall be deemed the purchaser for that amount, and the sheriff shall immediately upon the perfecting of such sale, execute to the purchaser a conveyance of the premises, which shall convey to the purchaser all the title and interest of the owner sold under the original execution. If such sale should fail to satisfy the execution in full, the residue may be levied and collected of any other property of the defendant thereto, as in other cases. If the execution upon the judgment of the last redemptioner be stayed at the expiration of the year aforesaid, or there be installments on his judgment or decree, not

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then due, he shall, nevertheless, be entitled to execution as aforesaid, for the amount due him on account of his redemption, which shall be without prejudice to his right to sue out further final process on his judgment or decree, and any surplus remaining, after satisfying the costs of sale and amount due him on account of redemption, shall be paid to the clerk for distribution, as hereinafter provided. Such sale shall discharge the lien of the judgment on which the original sale was made, and the liens of all intervening judgments and decrees; and if any surplus remain after satisfying the execution upon the last sale, it shall be distributed by the court from whence said execution issued, among the judgment creditors whose liens are junior to that under which the original sale was made, according to their original priorities and equities. If the judgment on which such execution issues shall have been rendered in a court other than that in the clerk's office of which the statement, affidavit, and certificate of such last redemptioner are required to be filed, he shall before the issuing of such execution, procure duly certified copies of such statement, affidavit and certificate, and cause them to be filed and recorded in the "Lis Pendens Record," kept in the office of the clerk issuing the execution and said writ shall contain the recitals and mandate hereinbefore required.

Manner of redemption by lien holder whose lien is recorded

(4795) § **99**. Any person having a lien, otherwise than by judgment upon the real estate, or any parcel or parcels thereof sold in one body, may, at any time within one year from said sale, and after he shall have had his lien duly recorded where, by law, the recording thereof is provided for, redeem the same from the purchaser at said sale, or from any prior redemptioner, and redemption thereof may be made from him upon the same terms and conditions as hereinbefore required in cases of redemption by judgment-creditors, and if, at the expiration of one year from the sale on execution, no one shall have redeemed from him, and his lien remains unforeclosed, he shall retain a lien on the real estate so redeemed by him, as of the date of the judgment on which said sale was made, and may enforce the same in the suit to foreclose or enforce his lien, or by an independent action; and any sale of said real estate, in pursuance thereof, shall be absolute, and the purchaser immediately entitled to a conveyance, having the same effect as if in his lien, at the time he redeemed, had been in judgmnet.

All redemption entries to be indexed by clerk

(4796) § **100**. All entries in relation to the sale and redemption of real estate, as provided in this act, in the "Lis Pendens Record," shall be indexed therein by the clerk in the names of the judgment plaintiffs upon whose execution the real estate was sold against the defendant owing the same and also in the name of said defendant at the suit of said plaintiffs.

Pay of sheriff and other officers.

(4797) § **101**. The officers performing the services herein required shall charge and receive the like compensation as for similar services in other cases; but the sheriff, or other officer making the second or subsequent sale shall be entitled to a commission, only on the excess of the redemption money.

Purchaser may recover for waste and injury.

(4798) § **102**. The person receiving a conveyance from the

sheriff pursuant to the provisions of this act shall be entitled to recover for any waste or injury to the premises conveyed, committed after the original sale on execution.

Act not applicable to former sales.

(4799) § **103**. The provisions of this act shall not apply to any sale or execution or decretal order made before the taking effect of this act; but all liens and rights of redemption and resale, existing at the passage of this act and growing out of any such sale, may be enforced in like manner as if this act had not been passed, and in accordance with the statute in force when such sale was made. But all sales made after the passage of this act, and all redemptions therefrom, shall be governed by the provisions of this act.

Receipt of sheriff.

(4800) § **104**. The sheriff receiving an execution shall endorse thereon the year, month, day and hour when he received it.

Property of principal to be first exhausted.

(4801) § **105**. If it appear from the face of the execution, or by the indorsement of the clerk, that of those against whom it issued any one is surety for another, the property of the principal shall be first sold, unless the surety shall direct otherwise.

Return by mail, money excepted.

(4802) § **106**. When any execution shall be issued to any county other than the one in which the judgment is rendered. return may be made by mail, but money cannot be thus sent, except by the direction of the party entitled thereto or his attorney.

Sheriff to pay at once.

(4803) § **107**. When the sheriff has collected any money on execution, he shall pay over the same at the earliest opportunity, unless enjoined.

Neglect to levy, liability of sheriff.

(4804) § **108**. If any sheriff shall neglect or refuse to levy upon or sell any property justly liable to execution when the same might have been done, he shall be amerced to the value of such property, not to exceed the amount necessary to satisfy the execution.

Neglect to return, liability of sheriff.

(4805) § **109**. If any sheriff shall neglect or refuse to return an execution as required by law, or shall make a false return thereon, he shall be amerced in such amount as he might and should have levied by virtue of the execution.

Neglect to pay over, liability of sheriff.

(4806) § **110**. If any sheriff shall neglect or refuse, on demand, to pay over any money collected on execution to the execution-creditor, his agent or attorney, or to the execution-debtor, when he is entitled thereto, he shall be amerced to the amount thus withheld.

Further liability of sheriff.

(4807) § **111**. In all cases specified in the last three sections, the plaintiff shall, in addition to the amercement, recover of the officer legal interest and damages, not exceeding ten per cent on the principal sum recovered.

Proceedings against delinquent sheriff.

(4808) § **112**. Such recovery may be had by motion against the officer, in the proper court, ten days notice thereof being given, or by action on the bond of the sheriff. The proceedings in this section contemplated may be commenced immediately upon the default of the sheriff, either before or after the return day of the execution.

Return of execution.

(4809) § **113**. Every execution shall be returned forthwith, upon being satisfied by the collection of the money; also, upon

order of the plaintiff or his agent indorsed thereon. When the return day of an execution falls on Sunday, it shall be returned on the following Monday.

When sheriff shall give refunding bond.

(4810) § **114**. When the sheriff has sold the property of a non-resident or other person upon an execution issued on a judgment recovered against him in a case where publication is provided for, and no personal notice of the pendency of the action was given to such defendant, the plaintiff shall not be entitled to receive any of the proceeds of such sale until he has filed in the clerks office a written undertaking, with surety to be approved by the clerk, to the effect that he will refund the money about to be received by him, or so much thereof as shall be necessary, if the judgment shall afterward be annulled or set aside, and the defendant shall show that the plaintiff's claim is unfounded in whole or in part. But surety to refund shall not be required in cases of attachment.

Effect of death of defendant

(4811) § **115**. The death of a defendant, after the execution is placed in the hands of the sheriff to be executed, shall not effect his proceedings thereon, except that the amount of property allowed absolutely to the widow of the decedent shall be exempt from levy and sale under such execution.

Against the body.

(4812) § **116**. No execution shall be issued pon any judgment against the body of any execution-debtor, except as hereinafter provided.

Writ served by arrest and commitment

(4813) § **117**. Before any such execution shall issue, the plaintiff shall file with the clerk an affidavit, charging the debtor with fraudulently concealing, removing, conveying, or transferring his property subject to execution, with intent to defraud and delay the plaintiff, or charging that the debtor has money, rights, credits, or effects, with which the judgment, or some part thereof, might be paid, and which he fraudulently withholds or conceals with a view to delay or defraud the creditor.

Finding must designate the property.

(4814) § **118**. The affidavit need not designate specifically any property, moneys, or effects, fraudulently removed, transferred, concealed, conveyed, or withheld, by the debtor; but the jury or court, in determining the matters in issue between the parties, if the finding be for the creditor, shall designate, in the finding, the moneys, effects, property, debts, or things in action, subject to execution, which have been removed, concealed, transferred, conveyed, or withheld, and the value thereof.

Notice to debtor.

(4815) § **119**. Upon the filing of the affidavit, the clerk shall issue a notice, requiring the debtor to appear at the next term of the court, and show cause why such execution should not appear against him.

Hearing, when had.

(4816) § **120**. After ten days notice, or after the return of two notices of "not found," the court shall hear and determine the matters and things contained in the affidavit.

Hearing in absence of debtor.

(4817) § **121**. If the debtor shall fail to appear and show cause, the court may hear and determine the same in the absence of the debtor; or a jury for that purpose may be empanelled, if desired by the creditor.

Issue on trial.

(4818) § **122**. If the debtor appear and plead to the affidavit

and sufficient matter to bar the issuing of the execution, and issue be taken thereon, the same may be tried by the court or a jury, as in other cases.

Issue against debtor, execution.

(4819) § **123.** If the issue be determined against the debtor, the court, unless good cause be shown, shall forthwith order an execution against his body, subject to the rules and restrictions of the next two sections.

If property surrendered, no execution

(4820) § **124.** If the debtor shall surrender such moneys, effects, property, debts, or things in action, to the use and for the benefit of the creditor, or pay the value thereof, as found by the court, or jury no execution shall for that cause be issued against his body.

On failure to surrender, execution issues

(4821) § **125.** If the debtor fail to surrender or pay as provided in the preceding section upon the return of such finding an execution shall forthwith issue against his body upon the judgment.

Writ served by arrest and commitment.

(4822) § **126.** The execution against the body shall be served by arresting the defedant, and unless discharged by due course of law committing him to the common jail of the county.

Affidavit for arrest pending proceedings.

(4823) § **127.** If the creditor show in his affidavit that the debtor has not been held to special bail in the original action, or, having thus been held, has been surrendered by the bail, and that he has reason to fear, and does fear, that such debtor will leave the Territory, before the trial and determination of the matters alleged in the affidavit, an order of arrest and bail shall issue against the debtor, and be served in return, as in other cases.

Recognizance.

(4824) § **128.** The debtor, when arrested on an order of arrest, may enter into recognizance, with sufficient surety, for his appearance at the trial of such proceedings, and for the surrender of his body if an execution be awarded.

Its form, effect, and return.

(4825) § **129.** The sheriff may take the recognizance in the form and by the rules provided in other cases for order of arrest and bail, either before or after the debtor is committed to prison, and shall return the same to the proper court. The recognizance shall have the same force as in other cases, and all subsequent proceedings may be had thereon by the parties and persons interested, as are provided in cases of arrest and bail.

Debtor, how discharged.

(4826) § **130.** Any person arrested or imprisoned on execution may discharge himself from custody by delivering to the sheriff a sufficiency of property, either real or personal, to discharge the debt or damages due on the execution, together with the interest and costs thereon, or by delivering to the sheriff all the property both real and personal, which he may have, not included in the finding of the court or jury, subject to execution, if any, together with the property, credits, and effects included in the finding of the court or jury, and all choses in action, if any, exceeding, with other property retained, the amount exempt by law from execution. He shall also make oath that he has no more or other property either real or personal, subject to execution, and that he has no moneys, rights, credits, or effects in his possession, or under his control, or in the possession, or under the control of any other person for his use, exceeding, with other

property retained, the amount exempt from execution, and that he has neither directly nor indirectly, disposed of, transferred, or concealed any of his property, rights, credits, moneys, or effects nor confessed or suffered any judgment with intent to delay or defraud any of his creditors.

Oath, how taken.

(4827) § **131**. For the purpose of enabling the defendant to take the oath, it shall be the duty of the sheriff, upon the prisoner's request, to take him before some person authorized to administer an oath, who shall reduce the oath to writing, explain it to the prisoner, and cause him to be sworn to and subscribe it, and, having certified the oath, deliver to the sheriff, who shall make it a part of his return, by appending it to the execution.

Time and place of oath, notice to creditor.

(4828) § **132**. The execution-creditor shall be notified of the time and place at which the oath will be taken. The notice shall be served upon the creditor, or his agent or attorney, by the sheriff, if the creditor, his agent or attorney reside in the county, and if neither party reside in the county, the sheriff snall post up the notice in the clerk's office five days.

Creditor may examine prisoner.

(4829) § **133**. When the oath is administered, the execution-creditor, his agent or attorney, may propound to the prisoner any relevant questions tourching his property, moneys, rights, credits and effects, and the person administering the oath shall reduce the questions and answers to writing, and forthwith file the same with the clerk.

Discharge.

(4830) § **134**. When the prisoner has strictly complied with the foregoing provisions he shall be discharged.

Disposition of property

(4831) § **135**. Any property given up by the person under arrest shall be disposed of by the sheriff in the same manner as property taken on execution against property.

Return of sheriff.

(4832) § **136**. The sheriff shall make return of all his doings therein, the discharge of the debtor, and the sale of the property, according to the facts to the court.

Effect of death of prisoner.

(4833) § **137**. The arrest of any person who may die while in custody shall not discharge the judgment of any lien upon the property, but the same may be enforced by any legal proceedings.

Proceedings upon escape

(4834) § **138**. Any person escaping from custody may be returned by the same or a new execution against his body, or his property may be proceeded against in the same manner as if his body had never been taken in execution.

Judgment-debtor, when required to answer.

(4835) § **139**. When an execution against the property of the judgment-debtor or any of the several debtors in the same judgment, issued to the sheriff of the county where he resides (or if he does not reside in the Territory, to the sheriff of the county where the judgment is rendered,) is returned unsatisfied, in whole or in part, the judgment-creditor; after such return is made, shall be entitled to an order, to be issued by any court of record in the county to which such execution issued, or by the clerk thereof in vacation, requiring the judgment-debtor to appear forthwith before the court if in session (if the court is not in session, then before the judge thereof, at a time and place to be spcified therein, or on the first day of the next term of the court,) to answer concerning his

property within the county to which the execution was issued, and a transcript of a judgment from a justice of the peace filed and docketed in the district court shall, for the purposes of this act, have all the effects of a judgment rendered originally in said court.

Judgment-debtor, when required to apply property

(4836) § **140**. If, after the issue of an execution against property, the execution-plaintiff, or any other person in his behalf, shall make and file an affidavit with the clerk of any court of record of any county, to the effect that any judgment-debtor, residing in such county, has property (describing it) which he unjustly refuses to apply toward the satisfaction of the judgment; the court, if in session, or the judge or clerk thereof in vacation, shall issue an order requiring the judgment-debtor to appear forthwith before the court, if in session, (if not, at the next term of the court, or before the judge thereof, at a time and place to be specified therein), to answer concerning the same, and such proceedings may thereafter be had for the application of the property of the judgment-debtor toward the satisfaction of the judgment, as provided upon the return of an execution.

Order of arrest and bail, when had.

(4837) § **141**. When the plaintiff, his agent or attorney, shall, at the time of applying for the order, or at any time afterward, make and file his affidavit with the court, or the clerk thereof in vacation, that there is danger of a debtor leaving the Territory or concealing himself, and that there is reason to believe he has property, rights, credits, moneys, or effects which he unjustly refuses to apply to the judgment, with intent to defraud the creditor, the court shall issue to the sheriff of the county an order of arrest and bail.

Bonds when required.

(4838) § **142**. The sheriff, having taken the execution-debtor into custody upon the order of arrest, shall require him to enter into a written undertaking to the plaintiff, with surety to be approved by the officer, that he will attend before the court, or judge thereof, as required, and abide such order as shall be made, and that he will not, in the meantime, dispose of any part of his property not exempt from execution. In default thereof, he shall be committed to prison, and, upon breach of such undertaking, the plaintiff shall have his remedy thereon to the amount of the value of the property unlawfully withheld or disposed of.

Other persons required to answer, after issue and return.

(4839) § **143**. After issuing or return of execution against the property of the judgment-debtor or any one of several debtors in the same judgment, and upon affidavit; that any person or corporation has property of such judgment-debtor, or is indebted to him in any amount, which, together with other property claimed by him as exempt from execution, shall exceed the amount of property so exempted by law, such person, corporation, or any member thereof, may be required to appear and answer concerning the same, as above provided,

Witnesses and examination.

(4840) § **144**. Witnesses may be required to appear and testify in the proceeding provided for in this act; and either party may examine the other as a witness in the same manner as upon the trial of an issue, or the plaintiff may waive the answer of the debtor, and rely upon other testimony. All such examinations

and answers shall be on the oath of the party, except that when a corporation answers, the answer shall be on the oath of an officer thereof.

Orders of court as to property.

(4841) § **145**. Upon the hearing, the judge of the court may order any property of the judgment-debtor, not exempt from exemption, in the hands of himself or any other person, or any debt due to the judgment-debtor, to be applied to the satisfaction of the judgment, and forbid transfers in choses in action, and such judge or court shall have full power to enforce all orders and decrees in the premises, by attachment or otherwise.

Costs, proceedings, summary

(4842) § **146**. Costs shall be awarded and taxed in this proceeding as in other cases; and all proceedings under this act, after the order has been made requiring parties to appear and answer, shall be summary, without further pleadings, upon the oral examination and testimony of parties and witnesses. But the sufficiency of the order and of the affidavit first filed by the plaintiff may be tested by demurrer or motion to dismiss or strike out the same.

ARTICLE 26.—ARBITRATION.

SECTION.
1. Who may arbitrate, agreement.
2. What may not be arbitrated, exception.
3. Bond agreement to make rule of court.
4. Time and place of meeting, notice.
5. Oath of arbitrators.
6. Who to administer oath.
7. Witnesses.
8. Hearing, award of majority valid.
9. Award must be in writing, signed and attested.
10. Fees to be returned with award.
11. Copies to be given to parties.
12. Filing in court.
13. Entry of award, rule to show cause
14. Judgment on award.
15. Hearing when had on rule to show cause.
16. What cause may be shown.
17. When party may move to correct award.
18 Proceedings on motion.
19. Kinds of judgment.
20. Costs, how taxed.
21. Judgment to do an act, how enforced.
22. Reference of suit in open court.
23. Referees, where sworn report.
24. Report and effect thereof.
25. Judgment on report.
26. Pay of arbitrators and referees.

Who may arbitrate, agreement.

(4843) § **1**. All persons, except infants and insane persons, may by an instrument in writing submit to the arbitration or umpirage of any person or persons to be by them mutually chosen, any controversy existing between them which may be the subject of a suit at law, except as otherwise provided in the next section, and may agree that such submission may be made a rule of any court of record designated in such instrument.

What may not be arbitrated, exception

(4844) § **2**. No such submission shall be made respecting the claim of any person to an estate in fee or for life to any real estate, but any claim to an interest in a term for years, or for one year or less in real estate and controversy respecting the partition of lands between joint tenants or tenants in common, or concerning the boundaries of lands, or concerning the assignment of dower, may be submitted to arbitration.

Bond, agreement to make rule of court

(4845) § **3**. When an agreement is made according to the preceding sections, the party shall execute bonds, with conditions to abide and faithfully perform the award of umpirage.

(4846) § **4**. As soon as such bonds are duly delivered either party may appoint a time and place for the arbitrator or arbitrators to meet by giving to the opposite party and to such arbitrator or arbitrators at least ten days written notice.

Time and place of meeting, notice.

(4847) § **5**. Before proceeding to hear any testimony such arbitrator or arbitrators shall be sworn faithfully and fairly to hear and examine the matters in controversy, and to make a just reward according to the best of his or their understanding.

Oath of arbitrators.

(4848) § **6**. Such oaths, and oaths to witnesses, may be administered by any person authorized to administer oaths.

Who to administer oaths.

(4849) § **7**. Witnesses may be required to attend before arbitrators on behalf of either party, by subpœnas issued by any justice of the peace, in the same manner and subject to the same process and penalties for disobedience, to be enforced by such parties as in trials before justices of the peace.

Witnesses.

(4850) § **8**. As soon as the arbitrator or arbitrators are ready to proceed to business the parties may exhibit their proofs. All the arbitrators must meet together and hear the allegations of the parties, but the award of a majority is valid unless otherwise required by the submission.

Hearing, award of majority valid.

(4851) § **9**. The award shall be in writing, and signed by the arbitrator or arbitrators who agree thereto, and shall be attested by a subscribing witness.

Award must be in writing, signed and attested.

(4852) § **10**. The fees of the justice issuing process and of the witness in such case shall be the same as allowed before justices of the peace and shall be ascertained and estimated by the arbitrators, and returned with the award, including therein their own fees as allowed by law.

Fees to be returned with award.

(4853) § **11**. A true copy of the award, and of the costs aforesaid shall be delivered to each of the parties, or left at his last usual place of residence, by any one of the arbitrators within fifteen days after the signing of such award.

Copies to be given to parties.

(4854) § **12**. If either of the parties shall fail or refuse to comply with such award the other party may file the same, together with the agreement of submission in the court named in such submission.

Filing in court.

(4855) § **13**. Upon such submission being proved by a subscribing witness thereto, or in case of his death, insanity or absence out of the Territory, then by proof thereof, as in other cases of a written instrument, and upon the award also being proved in like manner, or by the arbitrators of any of them, and upon proof that a copy of the award has been duly served on the party against whom the rule is asked, the court shall cause such submission and award to be entered of record, and shall grant a rule thereon against the adverse party, to show cause at that or the succeeding term of the court why judgment shall not be entered by such court upon the said award.

Entry of award, rule to show cause.

(4856) § **14**. Upon the return of the rule, the court shall confirm the award and render judgment thereon, unless the award be vacated or modified, or postponed, as herein provided, which judgment shall have the same force and effect as judgments in other causes.

Judgment on award.

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Hearing, when had on rule to show cause.

(4857) § **15**. If the rule has been served ten days or more on the adverse party before the time set for showing cause against the award, the court may proceed to examine and determine the same in his absence, or, if he appear, they shall proceed to hear and determine the grounds alleged against such award, if there be any.

What causes may be shown.

(4858) § **16**. In all cases where an award or umpirage shall be presented to any court of record for a judgment to be entered thereon, whether the reference shall have been made by submission of parties aforesaid or by rule of court, the adverse party may show, for cause against the rendition of such judgment, any of the following gronnds:

First. Such award or umpirage was obtained by fraud, corruption, partiality or other undue means, or that there was evident partiality or corruption in the arbitrators or any of them.

Second. That the arbitrator or arbitrators was or were guilty of misconduct in refusing to postpone a hearing upon sufficient cause shown, or in refusing to hear evidence material and pertinent to the controversy, or any other misbehavior by which the rights of any party shall have been predjudiced.

Third. That the arbitrator or arbitrators exceeded his or their powers, or that he or they so imperfectly executed them that a mutual, final, and definite award on the subject matter submitted was not made.

When party may move to correct award.

(4859) § **17**. Any party to such submission may move the court to modify or correct such award or umpirage, in the following cases:

First. When there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to or mentioned in such award or umpirage

Second. When the arbitrator or arbitrators shall have awarded upon some matter not submitted and not affecting the merits of the decision upon the matters which were submitted.

Third. When the award or umpirage shall be imperfect in some matter or form not affecting the controversy, and while, if it had been a verdict, such defect could have been properly amended or disregarded by the court.

Proceedings on motion

(4860) § **18**. The court shall hear the proofs and allegation of of the parties, to invalidate and sustain such award and umpirage, and shall decide thereon, either confirming such award or umpirage, or may modify and correct the same in the cases prescribed in the last preceding section so as to effect the intent thereof and to promote justice between the parties, and shall render judgment upon such original or corrected award or umpirage; or the court may vacate such award or umpirage for any of the causes hereinafter specified, at the cost of the parties seeking to enforce such award or umpirage.

Kinds of judgment.

(4861) § **19**. If such award or umpirage be confirmed, judgment may be given in favor of any party to whom any sum of money or damages shall have been awarded that he may recover the same, and if the award or umpirage shall have ordered any act

to be done by either party, judgment may be entered that such act be done according to such award or umpirage.

Costs, how taxed.

(4862) § **20.** The costs of the proceedings in court shall be taxed as costs in suits, and if no provision for the fees and expenses of the arbitration shall have been made in the award or umpirage the court shall make the allowance therefor. But if there was a suit pending previous to such admission, the costs of which were not noticed by the arbitrators or umpire the court shall not allow or tax any of the costs thereof prior to such submission.

Judgment to do an act, how enforced.

(4863) § **21.** When by any judgment of the court on award or umpirage, any party shall be required to perform an act other than the payment of money, the court shall have power to enforce the same by attachment, until the term of such judgment shall be complied with.

Reference of suit in open court

(4864) § **22.** If the subject matter of any suit pending in any court might originally have been submitted to arbitration, the parties to such suit, their agent or attorney-at-law may consent, by rule of the court, to refer the matter in controversy to certain persons mutually chosen by them in open court.

Referees, when sworn, report.

(4865) § **23.** Such referees, if required by the parties, shall be sworn in open court, or before any officer authorized to adminster oaths, faithfully and impartially to investigate, adjust and report the matters thus submitted, and shall proceed to the investigation of such matters according to the submission of the parties, and report to the court at such time as shall be agreed by the parties in such rule of reference.

Report and effect thereof.

(4866) § **24.** When such report shall be returned under the hands of the referees, or a majority of them, it shall be entered on the order-book, and shall be of the same effect, and be deemed and taken to be as available in law as the verdict of a jury.

Judgment on report.

(4867) § **25.** Either party may move the court for judgment on such report; and if no sufficient cause be shown to the contrary, judgment shall be rendered thereon in like manner and with like force and effect as if rendered upon verdict of a jury.

Pay of arbitrators and referees.

(4868) § **26.** Such arbitrators and referees shall be allowed one dollar per day each for every day they are necessarily employed as such arbitrators.

SECTION.
1. Arrest, conditions and manner.
2. Order of arrest, affidavit.
3. Plaintiff's undertaking.
4. Sheriff to execute order, contents.
5. Arrest.
6. Recognizance of special bail.
7. Return.
8. Effect of recognizance.
9. *Habeas corpus.*
10. Length of detention.
11. Plaintiff may object to insufficient bail.
12. Hearing proceedings, liability of sheriff.
13. Sheriff, when not liable.
14. Who may make affidavit.
15. Bail, when exonerated.
16. Arrest of principal by bail.
17. Surrender in open court.
18. Surrender in vacation to sheriff or jailer.
19. Copy of order must accompany surrender.
20. Indorsement of surrender, effect.
21. New bail.
22. Notice of surrender after judgment.
23. Disposition of surrendered defendant after judgment.
24. Failure to notify, liability of bail.
25. Suit on recognizance, limitation.

Arrest, conditions and manner

(4869) § **1.** A defendant in a civil action can be arrested and held to bail only upon the conditions and in the manner prescribed in this act.

Order of arrest, affidavit.

(4870) § **2.** An order for the arrest of the defendant shall be made by the court, in term time in which the action is brought, or by the clerk thereof, in vacation, at the commencement of the action or at any time before judgment when there is filed in the office of such clerk an affidavit of the plaintiff, his agent or attorney, specifying the plaintiff's right to recover an existing debt or damages from the defendant, and stating that he believes the defendant is about to leave the Territory, taking with him the property subject to execution, or money, or effects which should be applied to the payment of plaintiff's debt or damages with intent to defraud the plaintiff.

Plaintiff's undertaking.

(4871) § **3.** The order of arrest shall not be issued until there has been executed and filed in the office of the clerk of such court, by one or more sufficient sureties of the plaintiff, to be approved by the clerk of the court making the order, a written undertaking to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the arrest, if the order is wrongfully obtained, not exceeding double the amount of the plaintiff's claim stated in the affidavit.

Sheriff to execute order, contents

(4872) § **4.** The order of arrest shall be addressed and delivered to the sheriff. It shall state the names of the parties to the action, in the court in which the action is brought, and the amount of the plaintiff's claim specified in the affidavit and shall require the sheriff to arrest the defendant, and hold him to bail in the sum of the plaintiff's claim, with the costs of the action, and to make return of the order on a day to be named therein with the recognizance, if any is taken.

Arrest.

(4873) § **5.** The sheriff shall execute the order, by arresting the defendant, and keeping him in custody until discharged by law.

Recognizance of special bail.

(4874) § **6.** When an order of arrest and bail is executed, the sheriff shall take recognizance of special bail of some responsible person, resident of this Territory, in substance that the surety acknowledges himself special bail for the defendant in the action;

and which shall have the force and effect of recognizance of special bail, and be obligatory as such.

Return.

(4875) § **7**. It shall be the duty of the sheriff to return the order of arrest to the office whence it issued, immediately upon taking and approving of the recognizance of special bail, when bail is taken and in all other cases, on the return day, and in all cases the officer shall indorse his doings thereon.

Effect of recognizance

(4876) § **8**. Any such recognizance of special bail shall only amount to an undertaking that the defendant will surrender his body, or the money. property, and effects, or the value thereof, held or owned by him at the time of filing such affidavit, and in default of such surrender, the surety to such recognizance shall only be liable for the amount of the property, moneys, and effects which the plaintiff may show the defendant to have held or owned at the time of the filing such affidavit exceeding the amount exempt from execution.

Habeas corpus.

(4877) § **9**. When any person shall be committed to prison on an order of arrest for want of special bail, he may sue out a writ of *habeas corpus* in any court, or before any judge of competent jurisdiction, and on the return thereof the plaintiff shall be compelled to show that the facts alleged in the affidavit, on which the defendant is held to bail are true, and on failure to do so, the defendant shall be discharged.

Length of detention.

(4878) § **10**. When any person is committed for want of bail, he shall be he held in prison (unless he is bailed or otherwise legally discharged) until final judgment in the action in which he is arrested, and if the judgment be against him he shall be held for such time thereafter as the court shall direct, not exceeding ten days.

Plaintiff may object to insufficient bail

(4879) § **11**. If the plaintiff deem the bail insufficient, he may at the term to which the writ was returnable, or at any term thereafter before final judgment, object to the sufficiency of the bail by giving three days notice of the objection to the sheriff.

Hearing, proceeding, liability of sheriff.

(4880) § **12**. At the time specified in such notice, the court shall proceed to hear and determine as to the sufficiency of the bail, if adjudged insufficient, another bail approved by the court, is not given, the bail shall not be thereby discharged, but may be proceeded against by the plaintiff, and if he cannot recover the amount for which such bail may have become liable, the sheriff shall be liable upon his official bond for the same or so much as may remain unsatisfied, and for the costs of the action against the bail.

Sheriff, when not liable.

(4881) § **13**. The sheriff shall not be liable to the plaintiff on account of the insufficiency of the bail, if it shall appear that he acted with due care in accepting the same.

Who may make affidavit.

(4882) § **14**. Affidavits of the plaintiff's right to the debt or damages which he claims may be made by any person residing in this or any other territory, state or country, and additional affidavits may be made by other persons, stating the further grounds necessary to obtain an order for arrest and bail, and upon filing such affidavits duly authenticated, an order for the arrest and bail may be entered as in other cases.

Bail, when exonerated.

(4883) § **15**. The bail may be exonerated either by the death of the defendant, or his imprisonment in the state prison, or by his legal discharge from the obligation to render him amendable to the process, or by his surrender to the sheriff of the county where he was arrested in execution thereof, at any time before final adjournment against the bail of his recognizance.

Arrest of principal by bail

(4884) § **16**. The bail may at any time take a certified copy of the order of arrest and recognizance, by virtue of which he may take his principal and deliver him into the custody of the proper officer. Such copy shall be given and certified by the clerk.

Surrender in open court.

(4885) § **17**. If the court to which the order of arrest is returnable be in session at the time of the surrender, the same may be made in open court, and the court shall cause the discharge of the bail from all further liability, to be entered of record.

Surrender in vacation to sheriff or jailor.

(4886) § **18**. If the court be not in session, the surrender may be made to the sheriff or keeper of the jail of the proper county, who shall receive the prisoner and hold him in custody in like manner as if he had been committed by virtue of the order of arrest on which he was held to bail.

Copy of order must accompany surrender.

(4887) § **19**. But the sheriff shall not be bound to receive any person so surrendered unless the bail shall deliver to him a copy of the order of arrest and recognizance, certified by the officer who issued the original order of arrest.

Indorsement of surrender, effect.

(4888) § **20**. The sheriff or keeper of the jail shall acknowledge the reception of the principal, by an indorsement on the certified copy of the order of arrest, and, the surrender shall acquit the bail from all further liability as special bail.

New bond.

(4889) § **21**. Every defendant surrendered by his bail may be bailed as if arrested by the original order of arrest.

Notice of surrender after judgment.

(4890) § **22**. When the surrender of the principal is made after final judgment against him the bail shall within ten days after cause notice of the time and place thereof to be given to the plaintiff or his attorney, if either reside in the Territory, which notice shall be served by the sheriff, who shall deliver a certified copy of the notice to the keeper of the jail, on or before the expiration of ten days from the time of the surrender, but if neither the plaintiff nor his attorney reside in the Territory, the notice shall be posted up ten days in the clerk's office of the county, and a copy of the notice, certified by the clerk, shall be forthwith thereafter delivered to the keeper of the jail.

Disposition of surrendered defendant, after judgment

(4891) § **23**. When the surrender is made after the judgment, the prisoner shall be detained in custody, but if the plaintiff shall not proceed to charge him in execution within five days after the notice, the defendant shall be discharged from custody without any order for that purpose.

Failure to notify, liability of bail

(4892) § **24**. If any bail shall fail to give the required notice to the plaintiff or his attorney, and the principal shall be discharged, no proceedings being commenced to discharge him in execution, the bail shall remain liable on his own recognizance.

Suit on recognizance, limitation.

(4893) § **25**. Whenever the right of action has accrued against any special bail, the creditor may at any time within two years

after final judgment against the principal and not afterward, maintain an action on the recognizance in his own name.

ARTICLE 28.—ATTACHMENT.

SECTION.
1. Causes.
2. Concealing absence, effect.
3. Affidavit.
4. Bond.
5. Order.
6. Order to different counties, judgment when had.
7. When may issue on Sunday.
8. Inventory and appraisement, return.
9. Lien of.
10. Personalty attached before realty.
11. Delivery bond.
12. Right of property, how tried.
13. Examination on oath.
14. Lien of consignee.
15. Bond for restitution.
16. Sale of perishable goods, notice
17. Expenses for keeping.
18. Affidavit and summons for garnishee, return.
19. Liability of garnishee.
20. Statement of garnishee, examination.
21. Judgment for failure to answer.
22. Arrest of absconding garnishee.
23. No judgment until main action determined.
24. Proceedings not effected by return of "no property."
25. Costs as to garnishee.
26. Contract of garnishee, how performed

SECTION.
27. Garnishee paying, is discharged.
28. Examination, order of court.
29. Collecting officer subject to garnishment.
30. Claims of other creditors, how filed.
31. Subsequent creditors not effected by dismissal.
32. Appearance, discharge and restitution.
33. Effect of judgment for defendant
34. Judgment for plaintiff, enforcement.
35. Attached property, how sold.
36 Money, how distributed.
37. Action on plaintiff's bond, when.
38, Action by Territory, no affidavit or bond.
39. Sheriff's return.
40. Proceedings before justices.
41. Trial, judgment.
42. Garnishees.
43. Proceedings where claim exceeds jurisdiction of justice.
44. When plaintiff to pay costs
45. Wages, parties non-resident, no jurisdiction.
46. Wages for six months exempt.
47. Garnishee may pay six months' wages.

Causes

(4894) § **1.** The plaintiff at the time of filing his complaint, or at any time afterward, may have an attachment against the property of the defendant in the cases and in the manner hereinafter stated, where the action is for the recovery of money:

First. Where the defendant, or one of several defendants, is a foreign corporation or a non-resident of this Territory.

Second. Where the defendant, or one of several defendants. is secretly leaving or has left the Territory, with intent to defraud his creditors.

Third. So conceals himself that a summons cannot be served upon him.

Fourth. Is removing or about to remove his property subject to execution, or a material part thereof, out of this Territory, not leaving enough therein to satisfy his creditors or if the debt is due for property obtained under false pretense or if the indebtedness was fraudulently incurred.

Fifth. Has sold, conveyed, or otherwise disposed of his property subject to execution, or suffered or permitted it to be sold, with the fraudulent intent to cheat, hinder, or delay his creditors.

Sixth. Is about to sell, convey, or otherwise dispose of his property subject to execution, with such intent:

Provided, That the plaintiff shall be entitled to an attachment

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for the causes mentioned in the second, fourth, fifth and sixth specifications of this section, whether his cause of action be due or not.

Concealing absence, effect.

(4895) § **2.** If the wife or family of the debtor shall refuse or be unable to give account of his absence, or the place where he may be found, or shall give a false account of either, such refusal, inability or false account shall be deemed an attempt to conceal his absence, within the provisions of this act.

Affidavit.

(4896) § **3.** The plaintiff, or some person in his behalf, shall make an affidavit showing:

First. The nature of the plaintiff's claim.

Second. That it is just.

Third. The amount which he believes the plaintiff ought to recover.

Fourth. That there exists in the action some one of the grounds for an attachment above enumerated.

Bond.

(4897) § **4.** The plaintiff or some one in his behalf shall execute a written undertaking with sufficient surety to be approved by the clerk payable to the defendant, to the effect that the plaintiff will duly prosecute his proceeding in attachment, and will pay all damages which he may be sustained by the defendant, if the proceedings of the plaintiff shall be wrongful and oppressive.

Order.

(4898) § **5.** Upon the filing of such affidavit and written undertaking in the office of the clerk, he shall issue an order of attachment, which shall be directed and delivered to the sheriff. It shall require him to seize and take into his possession the property of the defendant in his county not exempt from execution.

Order to different counties; judgment, when had.

(4899) § **6.** Orders of attachment may be issued to the sheriff of any county, and several of them may at the option of the plaintiff, be issued at the same time or in succession, but the costs only of such as have been executed in whole or in part shall be recovered against the defendant, unless otherwise directed by the court. The plaintiff shall not have judgment in any such action except in some of the following cases, viz:

First. When the defendant shall have been personally served with process.

Second. When the property of the defendant shall have been attached in the county where the action was brought.

Third. When a garnishee shall have been summoned in the county where the action is brought, who shall be found to be indebted to the defendant, or to have property or assets in his hands subject to an attachment.

When may issue on Sunday.

(4900) § **7.** An order of attachment may be issued on Sunday, if the plaintiff will show in his affidavit that the defendant is about to abscond on that day to the injury of the plaintiff.

Inventory and appraisement, return.

(4901) § **8.** The sheriff shall proceed, with the assistance of a disinterested and creditable house-holder of the county, to attach the lands and tenements, goods and chattles of the defendant subject to execution, and shall, with the assistance of the house-holder, make an inventory and appraisement thereof, and return the same with the order.

Lien of.

(4902) § **9.** An order of attachment binds the defendant's

property in the county subject to execution, and becomes a lien thereon from the time of its delivery to the sheriff in the same manner as an execution.

Personalty attached before realty.

(4903) § **10.** The defendant's personal property shall be first taken under an attachment, if enough thereof is not found to satisfy the plaintiff's claim and costs of the action, then his real estate. If, after an order of attachment is placed in the hands of the sheriff, and property of the defendant is removed from the county, the sheriff may pursue and attach the same in any county, within three days after the removal.

Delivery bond.

(4904) § **11.** The defendant, or other person having possession of property attached, may have the same or any part thereof delivered to him, by executing and delivering to the sheriff a written undertaking, with surety to be approved by the sheriff, payable to the plaintiff, to the effect that such property shall be properly kept and taken care of, and shall be delivered to the sheriff on demand, or so much thereof as may be required to be sold on execution to satisfy any judgment which may be recovered against him in the action, or that he will pay the appraised value of the property, not exceeding the amount of the judgment and costs.

Right of property, how tried.

(4905) § **12.** Whenever any person other than the defendant shall claim any property attached, the right of property may be tried as in cases of property taken on execution, and the claimant, having notice of the attachment, shall be bound to prosecute his claim as in such cases, or be barred of his right.

Examination on oath.

(4906) § **13.** The defendant or claimant of any attached property may be required by the court to attend before it and give information on oath, respecting the property.

Lien of consignee.

(4907) § **14.** Goods attached in the hands of the consignee shall be subject to a lien for any debt due him from the consignor.

Bond for restitution.

(4908) § **15.** If the defendant, or any person in his behalf, at any time before judgment, shall execute a written undertaking to the plaintiff, with sufficient surety to be approved by the court, clerk, or sheriff, to the effect that the defendant will appear to the action, and will perform the judgment of the court, the attachment shall be discharged and restitution made of any property taken under it or the proceeds thereof.

Sale of perishable goods, notice.

(4909) § **16.** When personable property attached is of a perishable nature or its keeping expensive, the court may direct the sheriff to sell it at public auction upon reasonable notice if the property is liable to immediate damage, the sheriff in vacation may sell it by giving ten days notice without an order of the court, and the proceeds of all sales shall be deposited with the clerk.

Expenses for keeping.

(4910) § **17.** The sheriff shall be allowed by the court the necessary expenses of keeping the attached property, to be paid by the plaintiff and taxed in the costs.

Affidavit and summons for garnishee, return.

(4911) § **18.** If at the time an order of attachment issues, or at any time before or afterward, the plaintiff, or other person in his behalf, shall file with the clerk an affidavit that he has good reason to believe that any person, naming him, has property of the defendant of any description in his possession, or under his

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control, which the sheriff cannot attach by virtue of such order, or that such person is indebted to the defendant, or has the control or agency of any property, moneys, credits, or effects, or that the defendant has any shares or interest in the stock of any association or corporation, the clerk shall issue a summons notifying such person, corporation, or association to appear at the ensuing term of the court, and answer as garnishee in the action. The summons shall be directed to the sheriff, and served and returned by him in the same manner as a summons is served and returned in other cases. When the summons issues before an attachment, the affidavit must show some one of the causes authorizing the attachment.

Liability of garnishee.

(4912) § **19**. From the day of the service of the summons the garnishee shall be accountable to the plaintiff in the action for the amount of money, property, or credits in his hands, or due and owing from him to the defendant.

Statement of garnishee, examination.

(4913) § **20**. It shall be the duty of any officer or agent of an association or corporation, and of every other person summoned as a garnishee, when served, or within five days afterward, to furnish the sheriff with a certificate of the number of shares or rights of the defendant in the stock of such corporation or association, or a description of the property held by such corporation, association, or person whether due or not, which certificate shall be returned by the sheriff with the summons. If such officer, agent or person refuse to do so, he may be required by the court to attend before it and be examined on oath, concerning the same, and obedience to the orders may be enforced by attachment.

Judgment for failure to answer.

(4914) § **21**. Whenever any garnishee, being duly summoned, fails to appear and make discovery as required by law, or fails to answer or demur to the matters set forth against him in the affidavit or additional complaint or interrogatories, such matters may be taken as confessed, or judgment entered by default, as the case may require, or he may be examined under oath touching all the matter charged in the affidavit or additional complaint, and all such proceedings, pleadings, and process, shall be had, according to the practice in other cases, as shall be necessary to determine the rights of the parties and render a final judgment.

Arrest of absconding garnishee.

(4915) § **22**. If any plaintiff or other person in his behalf shall file with the clerk an affidavit that he fears that the garnishee will abscond before judgment can be had, with intent to defraud the plaintiff, and that he verily believes that the garnishee has moneys, things in action, goods, chattels, or effects of said defendant is in possession, or is indebted to said defendant, the clerk shall issue an order of arrest against the garnishee, and hold him to bail therein as in a civil action.

No judgment until main action determined

(4916) § **23**. Final judgment shall not be rendered against a garnishee until the action against the defendant in attachment is determined, and if the plaintiff fails to recover judgment either againt the defendant or the garnishee, the garnishee shall be discharged and recover his costs.

Proceedings not effected by return of "no property."

(4917) § **24**. The return of no property found upon the order

of attachment shall not effect the proceedings against the garnishee.

Costs as to garnishee.

(4918) § **25**. If the plaintiff recover judgment against the defendant, and the garnishee deliver up to the sheriff before judgment against him, all the defendant's goods and chattels, or other goods in his possession subject to execution, or an inventory thereof, and pay to the sheriff or into court all moneys due from him or belonging to the defendant the costs in the proceedings against the garnishee shall be paid by the defendant, but if the garnishee shall not appear, or if appearing shall refuse truly to confess the matter alleged, and, on the trial, the plaintiff shall recover judgment against him, or if he admits that he has moneys, credits or effects belong to the defendant in his hands and shall refuse to pay or deliver the same as above provided, he shall pay costs.

Contract of garnishee, how performed.

(4919) § **26**. A garnishee in attachment shall not be compelled in any case to pay or perform any contract in any other manner or at any other time, than he would be bound to do for the defendant in attachment.

Garnishee paying is discharged.

(4920) § **27**. A garnishee may pay the money owing to the defendant by him to the sheriff or into court, and shall be discharged from liability to the defendant for moneys so paid, not exceeding the plaintiff's claim.

Examination, order of court.

(4921) § **28**. A garnishee, or officer of a corporation, summoned as a garnishee, at any time after being served with the summons five days, may be examined in open court, on oath; and if it be discovered on such examination, that at the time or after the service of the summons upon him, he or the corporation was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property and the payment of such indebtedness into court, or the execution of a written undertaking by the garnishee, with sufficient sureties to be approved by the court, payable to the plaintiff, to the effect that the indebtedness shall be paid or the property forthcoming, as the court shall direct.

Collecting officers subject to garnishment.

(4922) § **29**. Clerks of the district courts, sheriffs, justices of the peace, constables, and all other officers who may collect money by virtue of their office, and all executors, administrators, guardions, and trustees, shall be subject to garnishment at the suit of any attachment creditor of the person who has money or choses in action in the hands of such officer, executor, administrator, guardian, or trustee at the time of the service of such garnishee process, in the same manner and to the same extent as other persons are liable to be garnished in attachment proceedings.

Claims of other creditors, how filed.

(4923) § **30**. Any creditor of the defendant, upon filing his affidavit and written undertaking, as hereinbefore required of the attaching creditor, may, at any time before the final judgement of the suit, make himself a party to the action, file his complaint, and prove his claim or demand against the defendant, and may have any person summoned as garnishee, or held to bail, who has not before been summoned or held to bail, and propound inter-

rogatories to the garnishee, and enforce answers thereto, in like manner, as the creditor who is plaintiff.

Subsequent creditors not effected by dismissal.

(4924) § **31**. A dismissal of his action or proceedings in attachment by the first attaching creditor shall not operate as a dismissal of the action or proceedings of any subsequent attaching creditor.

Appearance, discharge and restitution.

(4925) § **32**. Any defendant against whom an order of attachment has been issued may, after appearing to the action, move to have attachment discharged and restitution awarded of any property taken under it, but an appearance to the action shall not operate to discharge the attachment, unless a written undertaking be filed as required in section six hundred and twenty. If the defendant appear, and judgment be rendered in favor of the plaintiff, and any part thereof remain unsatisfied after exhausting the property attached, such judgment shall be deemed a judgment against the defendant personally, and shall have the same force and effect as other judgments, and execution shall issue thereon accordingly for the collection of such residue. If the plaintiff's undertaking be insufficient, he shall have a reasonable time to file an additional one.

Effect of judgment for defendant.

(4926) § **33**. If the judgment in the action is rendered for the defendant, the attachment shall be discharged and the property attached, or its proceeds, returned to him.

Judgment for plaintiff, enforced.

(4927) § **34**. If judgment in the action is rendered for the plaintiff, or one or more of the several plaintiffs, and sufficient proof be made of the goods, chattels, rights, credits, moneys and effects in the possession of the garnishee, the court shall also give judgment in favor of the plaintiff, or creditors against the garnishee or the property of the defendant, or both, as the case may require, which may be enforced by execution.

Attached property, how sold.

(4928) § **35**. After judgment for the plaintiff, or one or more of several plaintiffs, property attached and remaining unsold may be sold on execution as in other cases.

Money how distributed.

(4929) § **36**. The money realized from the attachment and the garnishee shall, under the direction of the court, after paying all costs and expenses, be paid to the several creditors in proportion to the amount of their several claims as adjusted, and the surplus, if any shall be paid to the defendant.

Action on plaintiff's bond, where.

(4930) § **37**. Every defendant shall be entitled to an action on the written undertaking of the plaintiff or creditor by whose proceedings in attachment he shall have been aggrieved, if it shall appear that the proceedings were wrongful and oppressive, and he shall recover damages at the discretion of the jury.

Action by Territory, no affidavit or bond.

(4931) § **38**. In all actions in the name of the Territory of Oklahoma, or of any person, agent, or officer for the use of the Territory, if process be returned that any defendant is not found, an order of attachment may be issued and proceedings had in like manner, as in other cases, without filing any affidavit or written undertaking.

Sheriff's return.

(4932) § **39**. When an order of attachment is fully executed or discharged, the sheriff shall return the same, with his proceedings thereon, to the court.

Proceedings before justices.

(4933) § **40**. Attachments against the goods and chattels, rights, credits, moneys and effects of defendants, may be issued in cases contemplated in the foregoing provisions, upon any claim within the jurisdiction of a justice of the peace, upon filing with the justice an affidavit, as prescribed in this article, and the justice shall perform the duties required of the court and the clerk thereof, and the constable shall perform the duties required of the sheriff in the above provisions. The constable shall return the order of attachment within ten days with his doings thereon, and in case where a summons has not been served and property has been attached, the justice shall give three weeks notice of the attachment in some newspaper published in the county, if any is published therein, if not, then by posting up written notices thereof in three of the most public places in the township, and fix the day of trial at the expiration of such notice.

Trial, judgment.

(4934) § **41**. If the defendant do not appear and give bond for the release of the property attached, before the day of trial, the justice shall proceed to hear and determine the cause; and in case judgment be given against the defendant, he shall order the property to be sold to satisfy the judgment, according to the provisions of this article.

Garnishees.

(4935) § **42**. Garnishees may be summoned and the same proceedings had before the justice, as provided in higher courts.

Proceedings where claim exceeds jurisdiction of justice

(4936) § **43**. When any suit is commenced before a justice of the peace, and an attachment is also issued by said justice in the same action against the property of the defendant, any person who shall have a claim against said defendant of a larger amount than the jurisdiction given to justices of the peace, may file the same with the justice of the peace under the attachment; and if any such claim is filed, the justice of the peace shall immediately certify the cause, with all the papers belonging to the district court of the county wherein said suit was commenced; and the clerk of said court to which the cause is certified, shall docket the same; and the said court shall proceed with such cause in the same manner as if it had been commenced in said court.

When plaintiff to pay costs.

(4937) § **44**. If any person shall file a claim before the justice of the peace, as stated in the preceding section, and shall, on the trial in the district court, fail to establish his claim to an amount sufficient to entitle him to recover costs in such court according to the provisions of law now in force, then, and in that event, he may recover judgment for his claim, if proved, but shall pay all costs that accrue in consequence of such transfer but if he shall recover judgment to an amount sufficient to entitle him to recover costs, then, and in that event, the attachment-defendant shall pay all costs to each attachment-plaintiff that shall recover judgment

Wages, parties non-resident, no jurisdiction

(4938) § **45**. Hereafter no court in this Territory shall have or entertain jurisdiction in any action of attachment, garnishment, or supplementary proceedings, when the plaintiff and principal defendant are both non-residents of this Territory, and the money sought to be reached by such attachment, garnishment or supplementary proceedings is the personal earnings, or wages due or

owing to the principal defendant from any person or corporation doing business in this Territory.

Wages for six months exempt.

(4939) § **46**. The wages of all persons in employ of any person or corporation shall be exempt from garnishment and proceedings supplemental to execution in the hands of such person or corporation so long as such employee remains in such employment, not exceeding six months wages at any one time.

Garnishee may pay six month's wages.

(4940) § **47**. Any person or corporation in debt for wages, as in the preceding section provided, may, at any time after being served with a garnishee summons, pay to any such employee the amount of wages exempted by the preceding section; and such payment shall discharge such garnishee-defendant from liability for the amount so paid, as effectually as if paid before the issuing of such summons.

ARTICLE 29.—CONTEMPTS OF COURT.

SECTION.
1. Direct, disturbing business of court.
2. Direct, refusing to testify, etc.
3. Indirect, disobeying process.
4. Indirect, resisting process, etc.
5. Indirect, false report of trial.
6. Punishment.
7. Trial for direct, appeal.
8. Indirect, rule to show cause.
9. Proceedings, decision and appeal.
10. To what courts law applicable, proviso.

Direct, disturbing business of court.

(4941) § **1**. Every person who shall, by the commission of any felony, misdemeanor, or unlawful act; or who by talking, moving about, or by signs, or gestures, or in any other manner, in any court of record, where the same is open for the transaction of business, and engaged therein, create any noise or confusion therein, whereby the business and proceedings of said court shall be disturbed, shall be deemed guilty of a direct contempt of court.

Direct, refusing to testify, etc,

(4942) § **2**. Every person who being sworn to testify as a witness in any court of record, in any trial or proceeding therein, shall refuse to testify touching the same; or who, being required by any court to be sworn in any such trial or proceeding, shall refuse to take an oath or affirmation therein, or who, while upon the witness stand, shall purposely so bemean himself, as to retard or disturb the proceedings thereof, shall be deemed guilty of direct contempt thereof.

Indirect, disobeying process

(4943) § **3**. Every person who shall be guilty of any wilful disobedience of any process or any order lawfully issued by any court of record, or by the proper officer thereof under the authority of law or the direction of such court, after the same shall have been served upon him, shall be guilty of an indirect contempt of court from which such process or order shall have issued.

Indirect, resisting process, etc.

(4944) § **4**. Every person who shall wilfully resist, hinder or delay the execution of any lawful process or order of any court of record shall be guilty of an indirect contempt of said court. And every person who shall offer, give, or promise any reward, or who shall threaten to assault or injure, or shall assault or beat, or in any other manner whatever influence or intimidate, or attempt to influence any witness to give or abstain from giving testimony in any case, or to abstain from attending as such witness in any

case, or who shall do any act to put such witness in fear on account of any testimony, which he or she may have given, or who, on account of any such testimony shall injure or threaten to injure such witness, shall be guilty of a direct or indirect contempt of the court in which such witness may be called to testify, according as the same may be done in the presence of such court or elsewhere out of the presence thereof.

Indirect, false report of trial.

(4945) § **5**. Every person who shall falsely make, utter or publish any false or grossly inaccurate report of any case, trial or proceeding thereof shall be deemed guilty of an indirect contempt of the court in which such case trial or proceeding may have been instituted, held or determined, if made at any time after such proceeding shall have been commenced and at any time while the same is pending, and while the court shall have jurisdiction thereof, and at any time before it shall be fully determined or entered, or if such report shall be so made pending such case, trial or proceeding touching any ruling or order of said court therein such person shall be deemed guilty of an indirect contempt of the court making such ruling or order.

Punishment

(4946) § **6**. Punishment for contempt of court under this act may be by fine or imprisonment or both in the discretion of the court inflicting the same, but no fine shall exceed the sum of five hundred dollars, nor shall any imprisonment extend beyond the term of three months.

Trial for direct, appeal.

(4947) § **7**. When any person shall be arraigned for a direct contempt of any court of record of this Territory, no affidavit, charge in writing, or complaint shall be required to be filed against him, but the court shall distinctly state the acts, words, signs, or gestures, or other conduct of the defendant which is alleged to constitute such contempt; and such statement shall be reduced to writing, either by the judge making it or by some reporter authorized by him to take it down when made; and the same shall be substantially set forth in the order of the court on the same, together with any statement made in explanation, extenuation or denial thereof, which the defendant may make in response thereto, and the court shall thereupon pronounce judgment, either acquitting and discharging the defendant or inflicting such punishment upon him as may be consistent with the provisions of this act; and if found guilty, the defendant shall have the right to except to the opinion and judgment of the court. And in all cases where the defendant may be adjudged to pay a fine of fifty dollars or more, or to be imprisoned for such contempt, he shall have the right, either before or after the payment of such fine or undergoing such imprisonment, to move the court to reconsider its opinion and judgment of the case, upon the facts before it, or upon the affidavits of any or all persons who were actually present and heard or saw the conduct alleged to have constituted such contempt; and, if the defendant shall fail to present the affidavit of every person present, in support of his motion the court may direct the affidavit of all such persons as were so present (whose affidavits the defendant may have failed to procure) to be procured; and upon all such affidavits and original statements of

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the court and himself touching such contempt, the defendant mny move the court for a new trial and recision of its judgment against him; and if the court shall thereupon overrule such motion the defendant may except and file a bill of exceptions, as in other criminal actions; and in all cases an appeal shall lie thereupon to the supreme court; or in case judgments shall have been rendered in any special term of the district court, an appeal shall lie in the first instance to the general term thereof, and thence as in other cases, to the Supreme Court.

Indirect rule to show cause.

(4948) § **8**. In all cases of indirect contempt, the person charged therewith shall be entitled, before answering thereto or being punished therefor, to have served upon him a rule of the court against which the alleged contempt may be committed; and which rule shall clearly and distinctly set forth the facts which are alleged to constitute such contempt, and shall specify the time and place of such facts with reasonable certainty as to inform the defendant of the nature and circumstances of the charge against him and shall specify a time and place at which he is required to show cause, in said court, why he should not be attached and be punished for such contempt, which time the court shall on proper showing, extend so as to give the defendant a reasonable and just opportunity to purge himself of such contempt. No such rule as hereinbefore provided for, shall ever issue until the facts alleged therein to constitute such contempt shall have been brought to the knowledge of the court by an information duly verified by the oath of affirmation of some officers of the court or other responsible person.

Proceedings, decision, appeal.

(4949) § **9**. If the defendant shall fail to appear in said court at the time and place specified in the rule provided for in the last preceding section, to answer the same, or if, after having appeared thereto, the defendant shall fail or refuse to answer touching such contempt, the court may proceed at once, and without any further delay, to attach and punish him or her for such contempt; but if the defendant shall answer to the facts set forth in such rule, by showing that, even if they are all true, they do not constitute a contempt of court, or by denying or explaining or confessing and avoiding them, so as to show that no contempt was intended, then and in every such case, the court shall acquit and discharge the defendant. But if the defendant shall not in his answer to such rule, sufficiently deny, explain, or avoid the facts therein set forth, so as to show that no contempt has been committed, the court may proceed to attach and punish him for contempt by a fine or imprisonment, or both as hereinbefore provided; and the defendant, having appeared to such rule, may except, file a bill of exceptions, and appeal to the general term to the Supreme Court, in the same manner as in cases of direct contempt.

To what courts law applicable, proviso

(4950) § **10**. The provisions of this act shall apply to all proceedings of contempt in all courts of records in this Territory except the Supreme Court thereof: *Provided, however*, That nothing therein contained shall be construed or held to embrace, limit or control any proceeding against any officer or party for contempt for the enforcement of civil rights and remedies: *And Provided*,

further, That the provisions of this act shall not apply to any case where any person has been personally served with notice to appear and testify as a witness in any court in this Territory in any case, civil or criminal, but that such persons so failing to appear as a witness may be proceeded against as for contempt of court by attachment, as though this act was not in force, but the proceeding against such absent witness by attachment shall not cause a continuance of the case in which such witness was subpœned to testify.

ARTICLE 30.—CONVEYANCES BY COMMISSIONERS.

SECTION.
1. Real property, how conveyed.
2. Contents of deeds.
3. Title passed under judgment.
4. Title passed under sale.
5. Approval by court necessary.
6. Signature, names of parties.
7. Recording.
8. Conveyance by party, how enforced.
9. Form of commissioner's deed.

Real property, how conveyed.

(4951) § **1**. Real property may be conveyed by a commissioner appointed by the court:

First. Where, by the judgment in an action, a party is ordered to convey real property to another or any interest therein.

Second. Or where real property, or any interest therein has been sold, and the purchase money has been paid.

Contents of deed.

(4952) § **2**. The deed of the commissioner shall so refer to the judgment authorizing the conveyance, that the same may be readily found, but need not recite the records in the case generally.

Title passed under judgment.

(4953) § **3**. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

Title passed under sale.

(4954) § **4**. A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding.

Approval by court necessary.

(4955) § **5**. A conveyance by a commissioner shall not pass any right, until it has been examined and approved by the court, which approval shall be indorsed on the conveyance and recorded with it.

Signature, names of parties.

(4956) § **6**. It shall be sufficient for the conveyance to be signed by the commissloner only without affixing the name of the parties whose title is conveyed; but the names of the parties shall be recited in the body of the conveyance.

Recording.

(4957) § **7**. The conveyance shall be recorded in the office in which by law, it should have been recorded had it been made by parties whose title is conveyed by it.

Conveyance by party, how enforced.

(4958) § **8**. In case of a judgment to compel a party to execute a conveyance of real estate, the court may enforce the judgment by attachment or sequestration, or appoint a commissioner to make the conveyance.

Form of commissioner's deed.

(4959) § **9**. If the conveyance is made by a commissioner appointed by the court, the following form may be used, viz: "A. B., commissioner by the order (or judgment) of (naming the court) in the case of (naming the party plaintiff) against (naming

Chap. 70. the party defendant) or on petition of (naming the description of the petitioner as A. B., administrator of C. D.) or guardian of (naming the wards) entered in (describe the kind of record, number of volume, and page), conveys to E. F., (describe the premises), for (state the consideration.)

ARTICLE 31.—DIVORCE.

SECTION
1. Marriages void.
2. Marriages voidable, issue legitimate.
3. Issue of certain marriages legitimate.
4. When issue legitimate though former marriage exist.
5. Proceedings to determine legitimacy.
6. Judgment how opened, purchasers protected.
7. Petition for divorce, residence, affidavit.
8. Causes, how specified.
9. Summons and service.
10. Notice by publication, copy, when mailed.
11. Issue and trial.

SECTION.
12. When prosecutor to resist.
13. Answer, proofs required.
14. Cross-petition and proceedings thereon.
15. Witnesses, depositions.
16. Interlocutory orders, how enforced.
17. Misconduct of husband, rights as to realty.
18. Misconduct of wife, rights as to realty.
19. Alimony.
20. Custody of children.
21. Decree of alimony, how payable.
22. Effect of divorce.
23. Divorce granted in another state.

Marriages void.

(4960) § **1**. All marriages prohibited by law on account of consanguinity, affinity, difference of color, or where either party thereto have a former wife or husband living, is solemnized within this Territory, shall be absolutely void without any legal proceedings.

Marriages voidable, issue legitimate

(4961) § **2**. When either of the parties to a marriage shall be incapable, from want of age or understanding, of contracting such marriage, the same shall be declared void, on application of the incapable party, by any court having jurisdiction to decree divorces; but the children of such marriage, begotten before the same is annulled, shall be legitimate; in such cases the same proceedings shall be had as is provided in applications for divorce.

Issue of certain marriages legitimate.

(4962) § **3**. The issue of a marriage, void on account of sanguinity, affinity, or difference of color, shall be deemed to be legitimate.

When issue legitimate, though former marriage exists.

(4963) § **4**. When either of the parties to a marriage void because of former marriage exists undissolved shall have contracted such void marriage in the reasonable belief that such disability did not exist, the issue of such marriage begotten before the discovery of such disability by such innocent party shall be deemed legitimate.

Proceedings to determine legitimacy.

(4964) § **5**. For the purpose of evidence any person or persons interested in the question of such legitimacy may file his petition in the district court or probate court of any county in this Territory where either of the parties to said marriage may reside, setting forth the facts and making defendants thereto all persons interested in such question, and give such notice to said defendants as is by this act required to be given to the defendant on a petition for a divorce, and the court on hearing such petition shall decree such issue to be legitimate or illegitimate as the

facts may be. And from such decree an appeal may be taken to the Supreme Court, and when taken the case shall be governed by the same rules and disposed of as other civil actions are in cases of appeal.

Judgment, how opened, purchasers protected.

(4965) § **6.** Parties against whom a judgment of divorce has been rendered, without other notice than publication in a newspaper may have the same opened at any time, so far as relates to the care, support and custody of the children. Parties against whom a judgment for divorce shall hereafter be rendered, without other notice than a publication in a newspaper, may at any time within two years after the rendition of such judgment have the same opened and be allowed to defend as well on the granting of the divorce as in relation to the allowance of alimony and the disposition of property; and until the expiration of said two years, it shall not be lawful for the parties obtaining such divorce to marry again; which shall be stated in the decree of the court. Before any judgment shall be opened, as above, for any cause, the applicant shall file a statement of the causes relied upon, and give such notice thereof as the court in term time, or the judge thereof, in vacation, shall require. And when the causes specified by such applicant relate to the granting of the divorce, alimony and disposition of property, or either of them, the applicant shall file an affidavit stating that during the pendency of the action, he or she received no actual notice thereof, in time to appear in court at the time of the trial of such action, and object to said judgment, and shall also place such costs as the court may direct. Any property which may have been sold under any such judgment so sought to be opened, and which may have passed into the hands of a purchaser or purchasers in good faith, shall not be affected by any proceeding consequent upon the opening of such judgment.

Petition for divorce, residence, affidavit.

(4966) § **7.** Divorce may be decreed by the district and probate courts of this Territory, on petition filed by any person who, at the time of the filing of such petition, is and shall have been a *bona fide* resident of the Territory for the last two years previous to the filing of the same, and a *bona fide* resident of the county at the time of and for at least six months immediately preceding the filing of such petition, which *bona fide* residence shall be duly proven by such petitioner, to the satisfaction of the court trying the same, by at least two witnesses who are resident freeholders and householders of the Territory, And the plaintiff shall, with his petition, file with the clerk of the court an affidavit subscribed and worn to by himself, in which he shall state the length of time he has been a resident of the Territory, and stating particularly the place, town, city or township in which he has resided for the last two years past, and stating his occupation, which shall be sworn to before the clerk of the court in which said complaint is filed.

Causes, how specified.

(4967) § **8.** A petition for divorce shall specify the causes therefor with certainty to a common intent.

Summons and service.

(4968) § **9.** The clerk of the court in which such petition is filed shall issue a summons for the defendant to appear and answer such petition; which summons shall be personally served on the

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said defendant, if a resident of the Territory, either by reading or leaving a copy thereof at his or her usual place of residence; such usual place to be the residence of such defendant at the time the copy is so left.

Notice by publication, copy, when mailed.

(4969) § **10.** If it shall appear by the affidavit of a disinterested person that the defendant is not a resident of this Territory the clerk shall give notice of the pendency of such petition, by publication for three successive weeks in some weekly newspaper of general circulation, published in such county, or if there be no such paper, then in one published in this Territory nearest to the county seat of such county: *Provided*, That the plaintiff shall in case such notice is to be given by publication as aforesaid, before the same is given, file his or her affidavit with the clerk, stating therein the residence of the defendant, if such residence be known to the plaintiff, such affidavit shall so state; and in case such affidavit state the residence of the defendant the clerk shall forward by mail to such defendant the number of the paper containing such notice and the notice marked.

Issue and trial,

(4970) § **11.** The cause shall stand for issue and trial at the first term of the court after the summons has been personally served upon the defendant ten days, or publication had been made thirty days before the first days of such term.

When prosecutor to resist.

(4971) § **12.** Whenever a petition for divorce remains undefended it shall be the duty of the county attorney to appear and resist such petition.

Answer, proofs required.

(4972) § **13.** The defendant shall answer said petition under oath, if required to do so by the petitioners, but no decree shall be rendered on default without proof, nor shall any admissions made in said answer be used as evidence in any other case against said defendant; nor shall the denial under oath, by the defendant, of the facts alleged in the petition rendered necessary any other or further proof by the complainant than would have been necessary if such denial had not been under oath.

Cross petition and proceedings thereon.

(4973) § **14.** In addition to an answer the defendant may file a cross petifion for divorce, and when filed the court shall decree the divorce to the party legally entitled thereto. If the original petition be dismissed after the filing of the cross petition, the defendant may proceed to the trial of the cross petition without further notice to the adverse party, and the case upon such cross petition shall in all things be governed by the same rules applicable to a case on an orignal petition.

Witnesses, depositions.

(4974) § **15.** Witnesses may be examined in court or depositions taken, and used as in other civil actions, at the option of the party offering the testimony, but this section shall not be construed to authorize the taking of depositions where the witnesses can be compelled to attend and testify as provided by law in other cases unless the judge for good cause shown shall otherwise direct.

Interlocutory orders, how enforced.

(4975) § **16.** Pending a petition for divorce, the court or the judge thereof in vacation, shall make and by attachment enforce such orders for the disposition of the persons, property and children of the parties as may be deemed right and proper, and such

orders relative to the expenses of such suit as will insure to the wife an efficient preparation of her case and a fair and impartial treatment thereof. And on decreeing a divorce in favor of the wife or refusing one on the application of the husband the court shall, by order to be enforced by attachment, require the husband to pay all reasonable expenses of the wife in the prosecution or defense of the petition when such divorce has been granted or refused: *Provided*, That such orders shall be made under the same rules and regulations, and upon such notice as restraining orders and injunctions are granted in other civil actions, except that no bond shall be required of either party.

Misconduct of husband, rights to realty.

(4976) § **17**. A divorce granted for misconduct of the husband shall entitle the wife to the same rights, so far as her real estate is concerned, that she would have been entitled to by his death.

Miseonduct of wife, rights as to realty.

(4977) § **18**. A divorce decreed on account of the misconduct of the wife shall entitle the husband to the same rights, so far as his real estate is concerned, as he would have been entitled to by her death.

Alimony.

(4978) § **19**. The court shall make such decree for alimony in all cases contemplated by this act, as the circumstances of the case shall render just and proper; and such decree for alimony heretofore made or hereinafter made, shall be valid against the husband, whether asked for in the petition or given by the judge on default.

Custody of children.

(4979) § **20**. The court in decreeing a divorce shall make provision for the guardianship, custody, support, and education of the minor children of such marriage.

Decree for alimony, how payable

(4980) § **21**. The decree for alimony to the wife shall be for a sum in gross, and not for annual payments; but the court, in its discretion, may give a reasonable time for the payment thereof by installments, on sufficient surety being given. And in all cases where alimony has been thus given by installments, or may hereafter be given, and the surety required shall not be given within thirty days from the date of such decree, then the whole amount ol such alimony shall become due and payable the same as if no such installments had been mentioned in the decree.

Effect of divorce.

(4981) § **22**. The divorce of one party shall fully dissolve the marriage contract as to both.

Divorce granted in another state.

(4982) § **23**. A divorce decree in any other state or territory, by a court having jurisdiction thereof, shall have full effect in this Territory.

SECTION.
1. Action for possession,
2. Landlord, when substituted, notice.
3. Landlord, when bound.
4. Service upon agent, when.
5. Contents of complaint.
6. Answer in denial, effect.
7. Proof of defendant's possession, when needless.
8. Plaintiff must show title.
9. Use of premises, recovery of, limit.
10. When plaintiff recovers damages only.
11. Recovery, separate or joint, according to right.
12. Damages and set-off.
13. Exemplary damages.
14. Proof against co-tenant.
15. New trial of right, bond.
16. New trial, after term.
17. Innocent purchasers.
18. Damages in lieu of land.
19. Entry and survey.
20. Order and service.
21. Action to quiet title.
22. Quieting title and partition, rules.
23. Disclaimer, costs,
24. Real party in interest to be plaintiff.

Action for possession

(4983) § **1.** Any person having a valid subsisting interest in real property and a right to the possession thereof may recover the same by action to be brought against the tenant in possession; if there be no such tenant then against the person claiming the title or some interest therein.

Landlord, when substituted, notice.

(4984) § **2.** Whenever it appears that the defendant is only a tenant, the landlord may be substituted, with reasonable notice thereof being given.

Landlord, when bound.

(4985) § **3.** In action against a tenant, the judgment shall be conclusive evidence against the landlord who has received notice as hereinbefore provided.

Service upon agent, when.

(4986) § **4.** When the defendant is a non-resident, service for the property may be levied upon his agent residing in the Territory with the like effect as though made upon the principal, or service may be made by publication, as in other cases.

Contents of complaint.

(4987) § **5.** The plaintiff in his complaint shall state that he is entitled to the possession of the premises, particularly describing them, the interest he claims therein, and that the defendant unlawfully keeps him out of possession.

Answer in denial, effect.

(4988) § **6.** The answer of the defendant may contain a denial of each material statement or allegation in the complaint, under which denial the defendant shall be permitted to give in evidence every defense to the action that he may have, either legal or equitable.

Proof of defendant's possession, when needless

(4989) § **7.** When the defendant makes defense, it shall not be necessary to prove him in possession of the premises.

Plaintiff must show title

(4990) § **8.** The plaintiff must recover on the strength of his own title.

Use of premises, recovery of limit

(4991) § **9.** The plaintiff cannot recover for the use and occupation of the premises for more than six years next before the commencement of the action; but may recover, in the same action, for use and occupation up to the time of its termination.

When plaintiff recovers damages only

(4992) § **10.** If the interest of the plaintiff expire before the time in which he could be put in possession, he shall obtain a judgment for damages only.

Recovery separate or joint according to rights.

(4993) § **11.** Where there are two or more plaintiffs or defendants, any one or more of the plaintiffs may recover against one or more of the defendants the premises or any part thereof, or

interest therein, or damages according to the right of the parties, but the recovery shall not be for a greater interest than that claimed.

Damages and set-off.

(4994) § **12**. When a plaintiff, in an action of this nature, is entitled to damages for withholding or using or injuring his property, the defendant may set off the value of any permanent improvements made thereon to the extent of such damages, unless he prefer to avail himself of the law for the benefit of occupying claimants.

Exemplary damages.

(4995) § **13**. In case of wanton aggression on the part of a defendant, the jury may award exemplary damages.

Proof against co-tenant.

(4997) § **14**. In action by a tenant in common or joint-tenant real property against his co-tenant, the plaintiff must show in addition to his evidence of right, that defendant either denied plaintiff's right or did some act amounting to such denial.

New trial of right, bond.

(4997) § **15**. The court rendering the judgment on application made within one year thereafter by the party against whom judgment is rendered, his heirs, assigns or representatives, and on the applicant giving an undertaking with surety to be approved by the court or clerk that he will pay all costs and damages which shall be recovered against him in action, shall vacate the judgment and grant a new trial. The court shall grant but one new trial under the provisions of this section.

New trial, after term,

(4998) § **16**. If the application for a new trial is made after the close of the term at which the judgment is rendered, the party obtaining a new trial shall give the opposite party ten days notice thereof before the term next succeeding the granting of the application.

Innocent purchasers

(4999) § **17**. The result of the new trial, if application therefor is made after the close of the term at which the judgment is rendered, shall in no case effect the interest of third persons, acquired in good faith, for a valuable consideration, since the former trial.

Damages in lieu of land.

(5000) § **18**. But the party who on such trial, shows himself entitled to the lands which have thus passed to the hands of a purchaser in good faith may recover the proper amount of damages against the other party, either in the same or subsequent actions.

Entry and survey.

(5001) § **19**. The court, on motion, and after notice to the opposite party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy, and make survey and measurement thereof for the purposes of the action.

Order and service.

(5002) § **20**. The order must describe the property, and a copy thereof must be served upon the owner or person having the occupancy and control of the land

Action to quiet title.

(5003) § **21**. An action may be brought by any person either in or out of possession, or by any one having an interest in remainder or reversion, against another who claims title to or interest in real property adverse to him, although the defendant may not be in possession thereof, for the purpose of determining and quieting the question of title.

Quietting title and partition, rules

(5004) § **22.** The rules above prescribed shall, in such cases, be observed as far as they are applicable; and in partition cases, when the title to real estate is *bona fide* in question, upon the pleadings and evidence between the parties.

Disclaimer, costs.

(5005) § **23.** If in such cases the defendant disclaim in his answer any interest or real estate in the property, or suffer judgment to be taken against him without answer, the defendant shall recover costs.

Real party in interest to be plaintiff.

(5006) § **24.** Any person having a right to recover the possession of real estate, or to quiet title thereto in the name of any other person or persons, shall have a right to recover possession or quiet title in his own name; and no action shall be defeated or reversed where it might have been successively maintained by the plaintiff, in the name of another, to inure to his benefit: *Provided,* That the provisions of this act shall not apply to or affect pending actions.

ARTICLE 33.—FORECLOSURE OF MORTGAGE.

SECTION.
1. Posession of premises,
2 How constiued, remedy.
3. Foreclosure before sale.
4. Purchase money, priority.
5. Entry of satisfaction, effect.
6. Certificate of satisfaction record.
7. Foreclosure by Territory.
8. Assignments, how made.
9. Parties, effects of sale, redemption.
10. Foreclosure.
11. When remedy confined to mortgaged property.
12. Personal judgment, order of sale.
13. Clerk to enter satisfaction, fees.
14. Order of sale.
15 Copy of order, how issued sale.
16 When cannot foreclose.
17. Installments not due, proceedings.
18. Sale in parcels, order.
19. Whole to be sold, when.
20. Plaintiff's endorsement on execution

Possession of premises

(5007) § **1.** Unless a mortgage specially provide that the mortgagee shall have possesson of the mortgaged premises he shall not be entitled to the same.

How construed, remedy

(5008) § **2.** No mortgage shall be construed as implying a covenant for the payment of the sum intended to be secured, so as to enable the mortgagee, his assigns, or representatives to maintain an action for the recovery of such sum, and where there is no express covenant contained in the mortgage for such payment and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

Foreclosure before sale

(5009) § **3.** No mortgage of real estate, or instrument operating as having the legal effect of a mortgage, hereafter executed, shall authorize the mortgagee to sell the mortgaged premises, but every such sale shall be made under a judicial proceeding.

Purchase money, priority,

(5010) § **4** A mortgage granted by a purchaser to secure purchase money shall have preference over a prior judgment against such purchaser.

Entry of satisfaction, effect

(5011) § **5.** Every mortgagee of lands whose mortgage has been recorded, having received full payment of the sum or sums of money, therein specified, from the mortgagor, shall, at the request of such mortgagor, enter satisfaction on the margin or other prop-

er place in the record, of such mortgage, which shall operate as a complete release and discharge thereof.

Certificate of satisfaction, record.

(5012) § **6**. Where such mortgage has been paid and satisfied by the mortgagor, he may take a certificate thereof, duly acknowledged by the mortgagee or his lawful agent, as herein required for the acknowledgment of conveyances, to entitle the same to be recorded, which certificate and acknowledgment shall be recorded by the recorder in whose office such mortgage is recorded, with a reference to the book and page containing the record of the mortgage aforesaid, and such recorded certificate shall forever discharge and release the mortgagor from such mortgage, and forever bar all suits and actions thereon.

Foreclosure by Territory.

(5013) § **7**. Nothing in this act shall affect any provisions made by law in relation to the foreclosure of mortgages to the Territory of Oklahoma, so far as the same conflict with the provisions of this act.

Assignment, how made.

(5014) § **8**. Any mortgage of record, or any part thereof, either by assignment entered on the margin of such record, signed by the person making the assignment and attested by the recorder, or by a separate instrument executed and acknowledged before any person authorized to take acknowledgments, and recorded on such margin, or in the mortgage records of the county, in which case such assignment shall be noted in such margin by the recorder, by reference to the book and page where such assignment is recorded. And after such entry is made of record, the mortgagor and all other persons shall be bound thereby, and the same shall be deemed a public record. Any assignee or his personal representatives may enter satisfaction or release of the mortgage; or the part thereof held by him of record as aforesaid.

Parties, effects of sale, redemption.

(5015) § **9**. And in a suit to foreclose said mortgage, it shall be sufficient to make the mortgagee, or the assignee shown by said record to hold an interest therein, plaintiffs. And all persons failing to cause assignment to them to be made or put of record in the manner aforesaid, unless they cause themselves to be made parties pending the action, shall be bound by such decree as may be rendered, the same as if they had been parties to the suit. And any purchaser at judicial sale of the mortgaged premises, or any part thereof, under such decree or claiming title under the same, buying without actual notice of any assignment not thus of record, or of the transfer of any note, the holder whereof was not a party to the action, shall hold the said premises, so purchased, free and discharged of such lien: *Provided, however*, That any assignee or transfer may redeem said premises, like any other creditor, during the period of one year allowed by statutes after such sales.

Foreclosure.

(5016) § **10**. When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns, may proceed, in the district court of the county where the land lies, to foreclose the equity of redemption contained in the mortgage.

When remedy confined to mortgaged property.

(5017) § **11**. When there is no express agreement in the

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mortgage, nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged.

Personal judgment, order of sale.

(5018) § **12**. In rendering judgment of foreclosure, the court shall give personal judgment against any party to the suit liable upon any agreement or agreements, for the payment of any sum or sums of money secured by the mortgage, and shall order the mortgaged premises, or so much thereof as may be necessary to satisfy the mortgage and judgment and costs of the action, to be first sold, before levy of execution upon other property of the defendant. The payment of the mortgaged debt, with interest and costs, at any time before sale, shall satisfy the judgment.

Clerk to enter satisfaction, fees.

(5019) § **13**. Upon the foreclosure of any mortgage in the district court of any county in this Territory, and upon the payment and satisfaction of such judgment as may be rendered in such proceedings in forclosure, in said court, the clerk thereof shall immediately thereafter enter satisfaction of said mortgage on the records of the recorder's office of such county, if the same shall have been recorded: *Provided*, That the record in foreclosure and satisfaction thereof shall show that the whole debt secured by such mortgage has been paid. Such clerk shall tax a fee of forty cents in each case of foreclosure requiring satisfaction, which shall be paid as other costs in such cases; twenty cents of which he shall pay to the recorder for his services, retaining twenty cents for his own services.

Order of sale.

(5020) § **14**. When there is an express written agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, and the court shall direct, in the order of sale, the balance due on the mortgage, and costs which may remain unsatisfied after the sale of mortgaged premises, shall be levied of any property of the mortgage-debtor.

Copy of order, how issued, sale

(5021) § **15**. The copy of the order of sale and judgment shall be issued and certified by the clerk, under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises, or so much thereof as may be necessary to satisfy the judgment, interest and costs, as upon execution, and if any part of the judgment, interest and costs remain unsatisfied, the sheriff shall forthwith proceed to levy the residue on the other property of the defendant.

When cannot foreclose.

(5022) § **16**. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action, nor shall he prosecute any other action for the same matter, while he is foreclosing his mortgage or prosecuting a judgment of foreclosure.

Installments not due, proceedings.

(5023) § **17**. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest, or installment of the principal, and there are other installments not due, if the defendant pay into court the principal and interest due, with costs, at any time before final judgment, the complaint shall be dismissed; if such payment be made after final judgment, pro-

ceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal and interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue.

Sale in parcels order

(5024) § **18.** In such cases, the court shall ascertain whether the property can be sold in parcels, and, if it can be done without injury to the interest of the parties, the court shall direct so much only of the premises to be sold as will be sufficient to pay the amount then due on a mortgage, with costs, and the judgment shall remain and be in force upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected.

Whole to be sold, when

(5025) § **19.** If the mortgaged premises cannot be sold in parcels the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage, and not due. And if the residue do not bear interest a deduction shall be made therefrom, by discounting the legal interest. And in all cases where the proceeds shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs or assigns.

Plaintiff's endorsement on execution

(5026) § **20.** Whenever an execution shall issue upon a judgment recovered for a debt secured by a mortgage of the real property, the plaintiff shall indorse thereon a brief description of the mortgaged premises and the equity of redemption shall in no case be sold on execution.

ARTICLE 34.—INFORMATIONS.

SECTION.
1 When filed.
2 By whom filed.
3. Of what consist.
4 For usurping office
5. Summons and proceeedings.
6 Contest for office, judgment.
7. Judgment for relator.
8. Damages.
9. One information against several.
10 Judgment of ouster and forfeiture.
11. Judgment against corporations.
12 To recover escheated property.
13. Costs.
14. To annul instrument.
15. Proceedings to annul.

When filed.

(5027) § **1.** An information may be filed against any person or corporation in the following cases:

First. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office or any franchise within this Territory, or any office in any corporation created by the authority of the Territory.

Second. Whenever any public officer shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his office.

Third. Where any association or number of persons shall act, with this Territory, as a corporation, without being legally incorporated.

Fourth. Or where any corporation do or omit acts which amount to a surrender or forfeiture of their rights and privileges

Chap. 70. as a corporation, or when they exercise powers not conferred by law.

By whom filed

(5028) § **2**. The information may be filed by the county attorney or attorney general in the district court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person, on his own relation, whenever he claims an interest in the office, franchise or corporation which is the subject of the information.

Of what consist.

(5029) § **3**. The information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court.

For usurping office.

(5030) § **4**. Whenever an information shall be filed against a person for usurping an office, by the county attorney or attorney general, he shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his right thereto; and when filed by any other person, he shall show his interest in the matter; and he may claim the damages he has sustained.

Summons and proceeeings

(5031) § **5**. Whenever an information is filed, a summons shall issue thereon; which shall be served and returned as in other actions. The defendant shall appear and answer, or suffer default, and subsequent proceedings be had as in other cases.

Contest for office, judgment

(5032) § **6**. In every case contesting the right to an office, judgment shall be rendered upon the rights of the parties and for damages the relator may show himself entitled to, if any, to the time of the judgment.

Judgment for relator

(5033) § **7**. If judgment be rendered in favor of the relator, he shall proceed to exercise the function of the office, after he has been qualified as required by law; and the court shall order the defendant to deliver over all books and papers, pursuant to the order, and the court, or judge thereof, shall enforce the order by attachment and imprisonment.

Damages.

(5034) § **8**. When the judgment is rendered in favor of the plaintiff, he may if he has not claimed his damages in the information, have his action for the damages at any time within one year after the judgment.

One information against several.

(5035) § **9**. When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons, in order to try their respective rights to the office or franchise.

Judgment of ouster or forfeiture.

(5036) § **10**. Whenever any person shall be found guilty of any usurpation of, or intrusion into, or unlawfully exercising any office or any franchise within this Territory, or any office in any corporation created by the authority of this Territory, or when any public officer, thus charged, shall be found guilty of having done or suffered any act which, by the provisions of law, shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation, without having been legally incorporated, the court shall give judgment of ouster against the defendant, and exclude him from the office, franchise, or corporate rights, (and in cases of corpora-

tions, that the same shall be dissolved) and the court shall adjudge costs in favor of the plaintiff.

Judgment against corporation.

(5037) § **11.** If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the court may cause the costs to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation; and shall restrain the corporation, appoint a receiver of its property and effects, take an account and make a distribution thereof among the creditors. The county attorney and Attorney General shall immediately institute proceedings for that purpose.

To recover escheated property.

(5038) § **12.** Whenever any property shall escheat or be forfeited to the Territory for its use, the legal title shall be deemed to be in the Territory from the time of the escheat or forfeiture, and an information may be filed by the Attorney General or county attorney in the district for the recovery of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in a civil action for the recovery of the property.

Costs

(5039) § **13.** When an information is filed by the Attorney General or county attorney, he shall not be liable for costs, but when it is filed upon the relation of a private person, he shall be liable for costs, unless the same are adjudged against the defendant.

To annul instrument.

(5040) § **14.** An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate or deed granted by the proper authorities of this Territory, when there is reason to believe that the same were obtained by fraud, or through mistake or ignorance of a material fact, or when the patentee or those claiming under him shall have done or omitted an act in violation of the terms on which the letters, deeds, or certificate was granted, or have by any means forfeited the interest acquired under the same.

Proceedings to annul.

(5041) § **15.** In such cases, the information may be filed by the Attorney General or county attorney upon his relation, or by any private person upon his relation, showing his interest in the subject matter, and the subsequent proceeding, judgment of the court and awarding of costs shall conform to the above provisions, and such letters patent, deed, or certificate shall be annulled or sustained according to the right of the case.

ARTICLE 35.—INJUNCTIONS.

SECTION.
1. Who may grant.
2. Proceedings to obtain
3 Application to be verified.
4. Notice unneccessary unless emergency
5 Affidavits may be read.
6 Terms and conditions.
7. Bond
8 Second bond unnecessary, exception.
9 Copy of order a sufficient writ.
10 Stay of judgment, release of errors.

SECTION.
11. When and whom binds.
12. Notice.
13. Money on judgment enjoined.
14. Order disobeyed, contempt.
15. Service of attachment, action of the court.
16. Bond of party.
17. Motions to dissolve or modify.
18. Damages on dissolving
19. Damages include rents and waste.
20. Motion to reinstate.

Who may grant.

(5042) § **1**. Restraining orders and injunctions may be granted by the Supreme Court in term time, when necessary and proper for the due exercise of the jurisdiction and powers of such court, or by any judge thereof in vacation or recess, and by the district courts in their respective counties in term time, or by the judges thereof in vacation, or by a probate judge and the said courts in term time, or the judge thereof in vacation may, in any county of the district, issue restraining orders or injunctions to operate in any other county in the district.

Proceedings so obtain

(5043) § **2**. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation, would produce great injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering some act to be done, in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual; or when such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such acts or proceedings until the further order of the court; which may, afterward, be modified upon motion. And when it appears in the complaint at the commencement of the action, or during the pendency thereof by affidavit, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property.

Application to be verified,

(5044) § **3**. In all applications for an injunction, the complaint shall be verified by affidavit. The injunction may be granted at the time of commencing the action, or at any time afterward before judgment in the proceeding.

Notice unnecessary, unless emergency.

(5045) § **4**. No injunction shall be granted until it shall appear to the court or judge granting it, that some one or more of the opposite party concerned has had reasonable notice of the time and place of making the application; except that in cases of emergency to be shown in the complaint, the court may grant a restraining order until notice can be given and hearing thereon.

Affidavits may be read.

(5046) § **5**. On the hearing of an application for a restraining order or temporary injunction, each party may read affidavits of documentary or record evidence.

Terms and conditions.

(5047) § **6**. Upon the granting or continuing of an injunction such terms and conditions may be imposed upon the party obtaining it as may be deemed equitable.

Bond.

(5048) § **7**. No injunction or restraining orders shall be granted until the party asking it shall enter into a written undertaking with surety to be approved by the court or judge, to the adverse party effected thereby, for the payment of all damages and costs which may accrue by reason of the injunction or restraining order.

Second bond unnecessary, exception.

(5049) § **8**. When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be re-

quired to enter into a second written undertaking, unless the former shall be deemed insufficient, but the plaintiff and his surety shall remain liable upon the original undertaking.

Copy of order a sufficient writ.

(5050) § **9**. It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order of injunction, duly certified by him; which shall be forthwith served by delivering the same to the adverse party.

Stay of judgment, release of errors.

(5051) § **10**. In applications to stay proceedings after judgment, the plaintiff shall indorse upon his complaint a release of errors in the judgment whenever required to do so by the judgment or court.

When and whom binds.

(5052) § **11**. An order of injunction shall bind every person and officer restrained, from the time he is informed thereof.

Notice.

(5053) § **12**. When notice of the application for an injunction has been given to the adverse party it shall not be necessary to serve the order upon him, but he shall be bound by the injunction as soon as the written undertaking required of the plaintiff is executed and delivered to the proper officer.

Money on judgment enjoined.

(5054) § **13**. Money collected upon a judgment afterward injoined remaining in the hands of the collecting officer, shall be paid to the clerk of the court granting the injunction, subject to the order of the court.

Order disobeyed, contempt.

(5055) § **14**. When it shall appear to any court granting an order of injunction, or judge thereof in vacation, by affidavit, that any person has wilfully disobeyed the order, after notice thereof, such court or judge shall award an attachment for contempt against the party charged or a rule to show cause why it should not issue. The attachment or rule shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by him.

Service of attachment, action of court

(5056) § **15**. The attachment for contempt shall be immediately served by arresting the party charged. and bringing him into court, if in session, to be dealt with as in other cases of contempt; and the court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises.

Bond of party.

(5057) § **16**. If the court be not in session the officer making the arrest shall cause the person to enter into a written undertaking, with surety to be approved by the officer, personally to appear in open court, on the first day of the next term thereof, to answer such contempt, and that he will pay to the plaintiff all his damages and costs occasioned by the breach of the order; and in default thereof he shall be committed to the jail of the county, until he shall enter into such written undertaking with surety, or be otherwise legally discharged.

Motion to dissolve or modify.

(5058) § **17**. Motions to dissolve or modify injunctions may be made in open court at any time after the adverse party has had reasonable notice.

Damages on dissolving.

(5059) § **18**. When an injunction to stay proceedings after judgment for debt or damages shall be dissolved the court shall award such damages not exceeding ten per cent on the judg-

ment, as the court may deem right, against the party in whose favor the injunction issued.

Damages include rents and waste.

(5060) § **19.** If an injunction to stay proceedings after verdict or judgment in an action for the recovery of real estate or the possession thereof be dissolved, the damages assessed against the party obtaining the injunction shall include the reasonable rents and profits of the land recovered, and all waste committed after granting the injunction.

Motion to reinstate.

(5061) § **20.** Upon an order being made dissolving or modifying an order of injunction, the plaintiff may move the court to reinstate the order, and the court may, in its discretion, allow the motion, and appoint a time for hearing the same before the court or at a time and place for hearing before some judge thereof; and upon the hearing, the parties may produce such additional affidavits or depositions as the court shall direct, and the order of injunction shall be dissolved, modified, or reinstated as the court or judge may deem right. Until the hearing of the motion to reinstate the order of injunction, the order to dissolve or modify it shall be suspended.

ARTICLE 36.—MANDATE AND PROHIBITION.

SECTION.
1. What courts issue.
2. To whom and for what purpose.
3. Application, neglect to return.
4. Writ, alternative or peremptory.
5. Issues, proceedings.
6. Damages, peremptory writ.
7. Power of court.
8. Obedience, how enforced.
9. Writ of prohibition.
10. Judgment in prohibition.
11. Costs.

What courts issue.

(5062) § **1.** Writs of mandate and prohibition may issue from the Supreme and district courts of this Territory, but such writs shall issue from the Supreme Court only when necessary for the exercise of its functions and powers.

To whom and for what purpose.

(5063) § **2.** Writs of mandate may be issued to any inferior tribunal, corporation, board or person to compel the performance of an act which the law specially enjoins or a duty resulting from an office, trust or station.

Application, neglect to return.

(5064) § **3.** The writ shall be issued upon affidavit and motion, and shall be attested and sealed, and made returnable as the court shall direct, and the person, body, or tribunal to whom the same shall be directed and delivered, shall make return, and for neglect to do so shall be proceeded against as for a contempt.

Writ, alternative or peremptory.

(5065) § **4.** The first writ shall be issued in the alternative or peremptory as the court shall direct.

Issues, proceedings.

(5066) § **5.** Whenever a return shall be made to any writ issues of law and fact may be joined, and like proceedings shall be had for the trial of issues and rendering judgment as in civil actions.

Damages peremptory writ.

(5067) § **6.** In case a verdict shall be found for the plaintiff where the writ is in the alternative, or if judgment be given for him he shall recover damages as in action for a false return against the party making the return and a peremptory writ shall be granted without delay.

(5068) § **7**. The court shall have the power to enlarge the time of making the return and pleading to such writ and for filing any subsequent pleadings, and to continue such cause, as in civil actions. Power of court.

(5069) § **8**. Obedience to such writs may be enforced by attachment, and fine or imprisonment, or both. Obedience, how enforced.

(5070) § **9**. The writ of prohibition shall command the court and party to whom it shall be directed, to refrain from any further proceedings in the matter therein specified until the return of the writ and the further order of the court thereon, and upon the return, to show cause why they shall not be absolutely restrained from any further proceedings in the matter. Writ of prohibition.

(5071) § **10**. The court shall render judgment, either that a prohibition absolute, restrain the court and party from proceeding in the matter, do issue, or authorizing the court and party to proceed in the matter in question. Judgment in prohibition.

(5072) § **11**. Costs shall be awarded in these proceedings as in civil actions. Costs.

ARTICLE 37.—PARTITION.

SECTION.
1. Who may compel.
2. Petition, contents, jurisdiction.
3. Proceedings as in civil cases.
4. Interlocutory judgment, sale when.
5. Testator's intention governs.
6. Commissioners.
7. Oath
8. Shares when set off together.
9 Guardian's act for wards.
10. Minors, party, commissioners may plat into lots.
11. Report, how made.
12. Confirmation, judgment.
13. Report, how set aside, new commissioners.
14. Land indivisible, sale, appraisement.
15. Effect of partial partition.
16. Commissioner to sell, bond.
17. Commissioners deed.
18. Commissioners cannot purchase.
19. Proceed, how distributed.
20. Two commissioners may act.
21. Vacancy, successor's acts valid.
22. Pay of commissioners.
23. Costs how apportioned.
24. Proceedings, when reviewed

(5073) § **1**. Any person holding lands as joint-tenant or tenant in common, whether in his own right or as an executor or trustee, may compel partition thereof in the manner provided in this act. An administrator or executor may also compel partition as a tenant in common or joint tenant may do, whenever, in the discharge of his duties as such, it shall be necessary for him to sell the estate of the decedent therein. Who may compel.

(5074) § **2**. Any such tenant may apply to the district court, or court having probate jurisdiction of the county in which the lands or part thereof may lie, by petition, setting forth a description of the premises and the rights and titles therein of the persons interested. Petition, contents, jurisdiction.

(5075) § **3**. The proceedings, practice, and pleadings shall be the same as in civil suits, except as otherwise provided in this act. Proceedings as in civil cases

(5076) § **4**. If upon trial of any issue, or upon default, or by consent of parties, it shall appear that partition ought to be made, the court shall award an interlocutory judgment that partition be made to parties who may desire same, specifying therein the share assigned to each, and taking into consideration advancements to Interlocutory judgment, sale when.

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heirs of a person dying intestate; and the residue of the premises shall remain for the persons entitled thereto, subject to a future partition. But if upon trial of any issue, or upon default, or by confession or consent of parties, it shall appear that the lands of which partition is demanded, cannot be divided without damage to the owners, then, and in that case, the court in its discretion may order the whole or any such part of the premises to be sold, as provided for in section 5086

Testator's intention governs.

(5077) § **5**. Such court shall not order or affirm partition of any real estate contrary to the intention of the testator, expressed in his will.

Commissioners

(5078) § **6**. Upon judgment of partition, the court shall appoint three disinterested resident freeholders of the county in which such court is held, not of kin to any of the parties who shall make partition of such lands, in pursuance of the judgment of the court.

Oath

(5079) § **7**. Before proceeding to discharge their duties such commissioners shall take an oath faithfully to perform the duties of their trust, which oath if taken in open court, shall be entered in their order book, and if not, shall be endorsed on the warrant issued to them to make such partition.

Shares when set-off together.

(5080) § **8**. Two or more persons may if they choose have their shares set off together.

Guardians act for wards

(5081) § **9**. In all proceedings under this act, guardians may act for their wards, as their wards might have acted, being of age.

Minors, parties, commissioners may plat into lots.

(5082) § **10**. In all cases where proceedings are now pending, or may hereafter be commenced in any [court] of this Territory, for the partition of real estate in which any minor is a party in interest, the commissioners appointed to make such partition are hereby authorized to lay off into lots or out-lots, streets and alleys, any lands including in such partition, and to make a plat thereof which shall be reported to the court for approval or rejection. If confirmed by the court such plat shall be acknowledged by such commissioners in open court, and shall be recorded as other plats of like nature are recorded, and shall have the validity in law as if made by a legal proprietor of such lands, of full age. It shall be the duty of the court to determine in such cases upon the return of such plats by said commissioners, whether it will be for the interest of the parties that such land should be layed off into lots or out-lots, streets, and alleys, and if so, then the partition may be made by said commissioners, as in other cases, if practicable, without detriment to the parties interested; and if the same shall not be susceptible of partition, then said lots or out-lots, may be sold by order of the court, as in other cases.

Report, how made.

(5083) § **11**. The commissioners shall make to the court and acknowledge in open court their report, or shall sign and swear to their report before some person authorized to administer oaths; which report shall specify by divisions or lots, or metes and bounds, or by plats, the shares assigned to each party.

Confirmation, judgment.

(5084) § **12**. Such report if confirmed by the court shall be spread upon the order book, and judgment of the partition be rendered accordingly.

Report, how set aside, new commissioners,

(5085) § **13**. The court before confirmation may set aside such return for good cause shown and commit the duty of partition anew to the same or other commissioners, to be appointed and qualified as aforesaid, whereupon the same proceedings shall be had as are before directed.

Land indivisible, sale, appraisement.

(5086) § **14**. When such commissioners shall report to the court that the whole or a part of the lands of which partition is demanded cannot be devided without damage to the owners, the court in its discretion may order the whole or such part of the premises to be sold at public or private sale on such terms and conditions as it may prescribe, provided that at public sale such land shall sell for at least two-thirds of its appraised value, and at private sale at not less than its appraised value, to be ascertained as in cases of sales of land on execution. And if a part only be sold the remainder may be partitioned subject to the rules hereinbefore provided.

Effect of partial partition.

(5087) § **15**. If under such partial partition, duly confirmed, the shares assigned be full shares the residue reserved for sale shall be dischared from all title or claim of the parties so receiving assignment of the shares.

Commissioner to sell, bond.

(5088) § **16**. Such sale shall be made by a commissioner to be appointed by the court other than one of the commissioners to make partition, and such commissioners shall file a bond payable to the Territory of Oklahoma in such penalty as the court may direct, conditioned for the faithful discharge of the duties of his trust.

Commissioner's deed

(5089) § **17**. Whenever it shall appear to the court that the purchase-money for the land sold had been duly paid, the court shall order such commissioner or some other person to execute conveyances to the purchasers, which shall bar all claims of such owners to said lands as effectually as if they themselves had executed the same.

Commissioners cannot purchase.

(5090) § **18**. Commissioners to make partition or to sell shall not become purchasers of said land.

Proceeds, how distributed.

(5091) § **19**. The money arising from such sale, after payment of just costs and expenses, shall be paid by such commissioners to the persons entitled thereto according to their respective shares, under the directions of the court.

Two commissioners may act.

(5092) § **20**. Any two of the persons named as commissioners to make partition may perform the duties required by this act; and vacancies may be filed by the court.

Vacancy, successors' acts valid.

(5093) § **21**. The occurrence of a vacancy shall not invalidate the previous acts of the commissioners, and a successor shall take up and continue the proceedings, which shall be valid as if the same had been done by the commissioners first appointed.

Pay of commissioners.

(5094) § **22**. Such court shall make allowance to the commissioners for their services, and for surveying, marking, chaining, plating, and the execution of the necessary conveyances as to such court shall seem reasonable.

Costs, how apportioned.

(5095) § **23**. All costs and necessary expesnses shall be awarded and enforced in favor of those entitled thereto, against

the partitioners, in such proportion against each as the court may determine.

Proceedings when reviewed

(5096) § **24**. Upon showing sufficient cause, any person not served with summons may, within one year after such partition is confirmed, appear and open the proceedings, and obtain a review thereof; and also any person of unsound mind, or any infant whose guardian did not attend and approve such partition, may, within one year after the removal of his disability, have a review of such partition.

ARTICLE 38.—PRINCIPAL AND SURETY.

SECTION.
1. Notice to creditor.
2. Surety discharged, when.
3. Trial of suretyship.
4. Order to exhaust principal's property.
5. Judgment in force for surety.
6. Remedy of co-sureties who pay.
7. When surety shall not suffer judgment.
8. When judgment of surety without relief.
9. Provisions extend to heirs of sureties.
10. Rate of interest.
11. Recognizance, when a lien.
12. Defective bond.

Notice to creditor

(5097) § **1**. Any person bound as surety upon any contract in writing for the payment of money or the performance of any act, when the right of action has accrued, may require by notice in writing, the creditor or obligee forthwith to institute an action upon the contract.

Surety, discharged when.

(5098) § **2**. If the creditor or obligee shall not proceed within a reasonable time to bring his action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon.

Trial of suretyship

(5099 § **3**. When an action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of suretyship to be tried and determined upon the issue made by the parties at trial of the cause, or at any time before or after the trial, or at a subsequent term; but such proceeding shall not effect the proceedings of the plaintiff.

Order to exhaust principal's property

(5100) § **4**. If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution, first upon and exhaust the property of the principal, before a levy shall be made upon the property of the surety, and the clerk shall indorse a memorandum of the order on the execution.

Judgment in force for surety.

(5101) § **5**. When any defendant surety in a judgment, or special bail or replevin bail, or surety in a delivery bond, or replevin bond, or any person being surety in any undertaking whatever has been or shall be compelled to pay any judgment or any part thereof, or make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer, or any surety upon his official bond, shall be compelled to pay any judgment, or any part thereof, by reason of any default of such officer, except for failing to pay over any money collected, or for wasting property levied on, the judgment shall

not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer, or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his use.

Remedy of co-sureties who pay.

(5102) § **6.** Any one of the several judgment-defendants, and any one of several replevin-bail, having paid and satisfied the plaintiff, shall have the remedy provided in the last section against the co-defendants or co-sureties, to collect of them the ratable proportion each is equitably bound to pay.

When surety shall not suffer judgment

(5103) § **7.** No surety or his representatives shall confess judgment, or suffer judgment by default in any case, when he is notified that there is a valid defense, if the principal will enter himself defendant to the action, and tender to the surety or his representatives good security to idemnify him to be approved by the court.

When judgment of surety without relief.

(5104) § **8.** Whenever any person seeks a remedy against another for whom he has discharged a debt or claim upon contract, in whole or in part, made payable without any relief from valuation or appraisement laws, for which he was bound as surety or otherwise, the remedy of such person shall also be enforced without any relief from such laws.

Provisions extend to heirs of sureties,

(5105) § **9.** The foregoing provisions of this article shall extend to heirs, executors, and administrators of deceased persons; but the provisions concerning sureties giving notice to the creditors shall not operate against persons under legal disabilities.

Rate of interest.

(5106) § **10.** In any case when a surety on any bill, note, bond or other instrument in writing shall be compelled to pay the debt or obligation of the principal debtor, such surety shall recover such rate of interest on the amount so paid by him for his principal as was originally provided for in such bill, note, bond or other instrument in writing held against the principal debtor, and the judgment therein shall bear the same rate of interest not exeeeding ten per cent per annum.

Recognizance, when a lien.

(5107) § **11.** Every recognizance shall bind the real estate of the principal from the time it was taken, but shall only bind the real estate of surety from the time judgment of forfeiture was rendered.

Defective bond

(5108) § **12.** No official bond entered into by any officer, or any bond, recognizance, or written undertaking taken by any officer in the discharge of the duties of his office, shall be void for want of form or substance or recital of condition, nor the principal or surety be discharged; but the principal and surety shall be bound by such bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the same, and the sureties to the amount specified in the bond or recognizance. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in his complaint, and recover to the same extent as if such bond, recognizance, or written undertaking were perfect in all respects.

ARTICLE 39.—RECEIVERS.

SECTION.
1. When appointed.
2. Who shall not be.
3 Oath and bond.
4. Deposit of money in court.
5. Failure to deposit, order of sheriff.
6. Money not to be loaned, exception.
7. Powers of receiver.
8. Court may enforce payment.
9. Notice of application, exception.
10. Apppeal in ten days.

When appointed.

(5109) § **1.** A receiver may be appointed by the court, or the judge thereof in vacation, in the following cases:

First. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim.

Second. In actions between partners, or persons jointly interested in any property or fund.

Third. In all actions, when it is shown that the property, fund, or rents and profits in controversy is in danger of being lost, removed, or materially injured.

Fourth. In actions by mortgagee for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; or when such property is not sufficient to discharge the mortgaged debt,—to secure the application of the rents and profits accruing before a sale can be made. And in cases where the mortgage provides for a receiver.

Fifth. When a corporation has been dissolved, or is insolvent or is in imminent danger of insolvency, or has forfeited its corporate rights.

Sixth. To protect or preserve, during the time allowed for redemption, any real estate or interest therein sold on execution or order of sale, and to secure to the person entitled thereto the rents and profits thereof.

Seventh. And in such other cases as may be provided by law; or where in the discretion of the court, or the judge thereof in vacation, it may be necessary to secure ample justice to the party.

Who shall not be.

(5110) § **2.** No party or attorney, or other person interested in an action, shall be appointed receiver therein.

Oath and bond.

(5111) § **3.** Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court, or the judge thereof in vacation, execute a written undertaking, payable to such person as the court, or the judge thereof in vacation, shall direct, to the effect that he will faithfully discharge the duties of a receiver in the action and obey the orders of the court or the judge thereof.

Deposit of money in court

(5112) § **4.** When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court, or the judge thereof in vacation. may order the same to be deposited in court, or with the clerk thereof in vacation, or deliver to such party with or without security, subject to the further order of the court or the judge thereof.

(5113) § **5**. Whenever, in the exercise of its authority, a court, or the judge thereof in vacation, shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court or the judge, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit it or deliver it in conformity with the direction of the court or judge thereof. Failure to deposit, order of sheriff.

(5114) § **6**. Money deposited or paid into court, or with the clerk thereof, in an action, shall not be loaned out, unless with the consent of all the parties having an interest in or making claim to the same. Money not to be loaned, exception.

(5115) § **7**. The receiver shall have power, under the control of the court, or of the judge thereof in vacation, to bring and defend actions, to take and keep possession of the property, to receive rents, collect debts in his own name, and generally to do such acts respecting the property, as the court or the judge thereof may authorize. Power of receiver

(5116) § **8**. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order by execution. Court may enforce payment.

(5117) § **9**. Receivers shall not be appointed either in term or vacation, in any case, until the adverse party shall have appeared, or shall have had reasonable notice of the application for such appointment, except upon sufficient cause shown by affidavit. Notice of application exception.

(5118) § **10**. In all cases hereafter commenced or now pending in any of the courts of this Territory, in which a receiver may be appointed or refused, the party aggrieved may, within ten days thereafter, appeal from the decision of the court to the Supreme Court, without awaiting the final determination of such case, and in cases where a receiver shall be or has been appointed upon the appellant filing an appeal bond with sufficient sureties, in such sum as may have been required of such receiver, conditioned for the due prosecution of such appeal, and the payment of all costs and damages that may accrue to any officer or person by reason thereof, the authority of such receiver shall be suspended until the final determination of such appeal. Appeal in ten days

ARTICLE 40.—REPLEVIN.

SECTION.		SECTION.	
1	When action lies.	8	Orders to different counties.
2	Affidavit for delivery.	9.	Fraudulent concealment, etc., fact returned.
3	Order for delivery.	10	Summons to show cause.
4	Contents of order.	11.	Service, proceedings.
5	Order, how executed, receiver.	12.	Issue, when tried.
6	Breaking open buildings.	13.	Execution against body.
7.	Custody of property.		

(5119) § **1**. When any personal goods are wrongfully taken or unlawfully detained from the owner or person claiming the possession thereof, or when taken on execution or attachment, or When action lies.

claimed by any person other than the defendant, the owner or claimant may bring an action for the possession thereof.

Affidavit for delivery.

(5120) § **2.** The plaintiff may at the time of issuing the summons or at any time before answer claim the immediate delivery of such property as provided in this act. When a delivery is claimed an affidavit must be made by the plaintiff, or some one in his behalf, showing:

First. That the plaintiff is the owner of the property, or that he is then lawfully entitled to the possession thereof, and particularly describe it.

Second. That the same has not been taken for tax, assessment, or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized that it is by a statute exempt from such seizure.

Third. That the property has been wrongfully taken, or is unlawfully detained by the defendant, or is unlawfully detained.

Fourth. The estimated value of the property, and in what county the same is believed to be detained.

Order for delivery.

(5121) § **3.** When such affidavit is filed with the clerk he shall issue an order for the seizure of the property and delivery thereof to the plaintiff.

Contents of order.

(5122) § **4.** The order shall be directed and delivered to the sheriff. It shall state the name of the parties to the action and the court in which action is brought and direct the sheriff to take the property, describing it and deliver it to the plaintiff and direct him to make return of his doings thereon.

Order, how executed. receiver

(5123) § **5.** The sheriff shall forthwith proceed to execute the order, by taking possession of the property described in the affidavit, or so much as can be found; and the defendant, or some person in his behalf, within twenty-four hours thereafter, shall execute a written undertaking, payable to the plaintiff with sufficient surety to be approved by the sheriff, to the effect that the defendant shall safely keep the property, that the same shall not be in any way injured or damaged, and that he will deliver the same to the plaintiff if judgment shall be rendered to that effect, and also that he will pay to the plaintiff all such sums of money as he may recover in the action, then the sheriff shall deliver the property to the defendant. But if such undertaking is not given within the time aforesaid, then the sheriff shall deliver the property to the plaintiff on receiving from him or some person on his behalf within twenty-four hours thereafter a written undertaking, payable to the defendant with sufficient surety to be approved by the sheriff, to the effect that the plaintiff will prosecute his action with effect and that he will return the property to the defendant, if return be adjudged by the court, and that he will pay to the defendant all such sums of money as may be recovered in the action for any cause whatever, and in default of the undertaking being given, the property shall be returned to the defendant, but the action shall not be dismissed or delayed thereby. And if the property claimed by the plaintiff shall have a peculiar value, that cannot be compensated by damages, either party, in term time or vacation, may by affidavit upon notice to

the other, move the judge of the court in which said cause is pending to appoint a receiver to take possession of the property, and keep the same until determination of the litigation in the cause, or until the further order of the court. And the judge upon such application shall make such order in the premises as will protect the rights of the parties.

Breaking open buildings.

(5124) § **6**. If the property, or any part thereof, be concealed in a building or enclosure, the sheriff shall demand its delivery, and if it shall not be delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession, and if necessary, he may call to his aid the power of the county. If the sheriff cannot find the property, or any part thereof, the action shall not abate, but be prosecuted to final judgment.

Custody of property.

(5125) § **7**. The sheriff shall safely keep the property during the time prescribed by the statute, and shall be allowed by the court the necessary expenses for doing so, to be paid by the plaintiff and taxed in the costs, if the property is recovered by the plaintiff. When it appears by the affidavit of the plaintiff, or any person on his behalf, or by the return of the officer, that the property claimed has been disposed of or concealed so that the order cannot be executed, the court may compel the attendance of the defendant, examine him on oath as to the situation of the property, and punish a wilful obstruction, or hinderance of the execution of the order and a disobedience of the orders of the court in this respect, as in cases of a contempt.

Orders to different counties.

(5126) § **8**. When the property is removed to another county after the commencement of the action, an order may at any time before judgment, be directed to such county for the seizure and delivery of the property claimed; and several orders to different counties may issue at the same time, at the option of the plaintiff, and the costs shall be taxed as the court shall direct. Such order to another county shall be served, and the property be delivered to the plaintiff, and the order returnable in the manner and upon the same terms as above provided.

Fraudulent concealment, etc, fact returned

(5127) § **9**. In all actions for the recovery of the possession of personal property upon affidavit filed as provided in this act, if the defendant shall fraudulently conceal, remove, transfer, withhold, or refuse to deliver the property mentioned in the affidavit of the plaintiff or his agent, with a view to defraud the plaintiff, the sheriff, or officer charged with the execution of the order to take such property into his possession, shall indorse the fact of such concealment, removal, transfer, withholding, or refusal by said defendant upon said order, and make return thereof to the court whence it issues.

Summons to show cause.

(5128) § **10**. Upon the filing of such return, on application of the plaintiff, his agent or attorney, the clerk or court who issues such order shall issue a summons requiring said defendant to appear before the court at the time set for the trial of said cause, to show why an execution against his body should not issue.

Service, proceedings.

(5129) § **11**. Such summons shall be served and returned in the same manner as other summons; and if the defendant fail to

appear, the trial of the issues shall proceed in his absence, according to the rule of practice in other cases.

Issue, when tried.

(5130) § **12.** The issue to be tried shall be the truth of the facts alleged in the plaintiff's affidavit and the officer's return endorsed on the order, which issue shall be tried at the time of the trial of the original suit.

Execution against body.

(5131) § **13.** If such trial be determined against such defendant, and he will not forthwith surrender for the benefit of the plaintiff the property mentioned in such affidavit found to have been concealed, removed, transferred, or withheld by him, or pay the value thereof into the court, an execution shall issue forthwith against his body, and he be arrested and committed to the prison of the county, there to be confined until duly discharged according to law.

ARTICLE 41.—GENERAL PROVISIONS.

SECTION.
1. Publication, how made,
2. Time, how computed.
3. Suerety, examination of.
4. Money substituted for bail.
5. Defective appeal bonds, new bonds
6. Costs accrued, additional bond.
7. Certain words, how construed.
8. Number, gender.
9 Pending suits.
10. Liberal construction.
11. Act not retroactive.
12. Existing rights of action how prosecuted.

Publication, how made.

(5132) § **1.** Publications of legal and other official matters printed in the English language shall be lawful if published in any newspaper of general circulation published in the county.

Time, how computed

(5133) § **2.** The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

Surety, examination of.

(5134) § **3.** Every court and officer authorized to take any bail or surety shall have power to examine on oath, the person offering to become such bail or surety, concerning his property and sufficiency as bail or surety.

Money substitute for bail

(5135) § **4.** Any person required to give bail may deposit with the clerk the amount of money for which he is required to give bail and thereupon be discharged from arrest.

Defective appeal bonds, new bonds.

(5136) § **5,** In all cases where an appeal shall be taken from a justice of the peace, board of county commissioners, viewers, or commissioners to assess damages, or from any other person or tribunal, to the district court, and the appeal bond filed in such case shall be defective in substance or form, or for want of proper approval, such case shall not be dismissed on account of such defect or informality, if the appellant will when required by the court to which such appeal is taken, file in such court a sufficient bond, with surety to the acceptance of such court, in such sum as such court shall require.

Costs accrued, additional bond.

(5137) § **6.** In all such appeal cases, when costs shall have accrued so as to render the sum named in the appeal-bond insufficient to secure the same, the court in which such appeal is pending shall require the appellant to give an additional bond in such

sum as the court shall deem sufficient, with surety to the acceptance of such court; and if the appellant fail or refuse so to do, such appeal shall be dismissed.

Certain words, how construed.

(5138) § **7.** In the construction of this act, the following rules shall be observed, when consistent with the context:

The word "sheriff" means the sheriff of the county or any other person authorized to perform his duties in any case.

The word "clerk" means the clerk of the court, or any person authorized to perform his duties in any case.

The phrase "of unsound mind" includes idiots, non-competents, lunatics and distracted persons.

The word "oath" includes the word "affirmation," and the phrase 'to swear" includes to affirm.

The word "person" extends to bodies politic and corporate.

The phrase "under legal disabilities" includes persons within the age of twenty-one years, or of unsound mind, or imprisoned in the state prison, or out of the United States.

The word "bond" as used in this act, does not necessarily imply a seal; but in other respects means the same kind of instruments as heretofore.

The word "land" and the phrases "real estate" and "real property" include lands, tenents and hereditaments.

The phrase "personal property" includes goods, chattels, evidences of debt and things in action.

The word "property" includes personal and real property.

The word "judgment" means all final orders, decrees and terminations in an action; also, all orders upon which executions may issue.

The phrase "money demands on contract," when used in reference to an action, means an action arising out of contract when the relief demanded is a recovery of money.

The word "attorney" includes a counsellor and every other person authorized to appear and represent a party in an action or special proceeding, in any stage thereof.

The word "verified" when applied to pleadings, means supported by oath or affirmation in writing.

Number, gender.

(5139) § **8.** Words implying the singular number, only, may be also applied to the plural of persons and things, and words implying the masculine gender only, may be extended to females also

Pending suits

(5140) § **9.** In actions already commenced, the pleadings to be had, the manner of procuring testimony, the examination of parties, the trial and rendition of judgment, and all other proceedings, shall conform to the provisions of this act, as far as practicable

Liberal construction.

(5141) § **10.** The provisions of this act shall be liberally construed, and shall not be limited by any rules of strict construction.

Act not retroactive.

(5142) § **11.** No part of this act shall be retroactive, unless expressly so declared.

Chap. 70. Existing rights of action, how prosecuted.

(5143) § **12.** All rights of action secured by existing laws may be prosecuted in the manner provided in this act.

ARTICLE 42.—OCCUPYING CLAIMANTS.

AN ACT Defining Occupying Claimants and Providing Protection for their Rights.

[Took effect December 25, 1890.]

SECTION.
1. Ejectment of qualified occupying claimant.
2. Conditions precedent to dispossession.
3. Action for recovery of improvements' value.
4. Petition, or counter-claim, contents.
5. Summons, joinder of issues, valuation, costs.
6. Conditions of taking property.
7. Tenants in common, partition.
8. Tax sales, validity.
9. Occupying and acts leading to ownership.
10. Claimant put in possession.
11. Cause, when docketed.
12. Improvements precedent and subsequent.
13. Rental a set-off against improvements.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Ejectment of claimant

(5144) § **1.** When a person qualified under the laws of the United States to make legal settlement upon public lands in Oklahoma has in good faith settled upon land or town lots, while the same was a part of the public domain of the United States, and made valuable improvements thereon, under such circumstances as to give him good reason to believe, and in addition thereto if he did believe, that he had a right to improve the land or lots so settled upon, and in any contest before the land departments to which the occupant, or any of his assignors, were parties by themselves or by trustees or agents acting for the settlers on the land in dispute, or if in an action in court to remove the settler from the land or lots, he is found not to be entitled to the same, he shall not be removed therefrom until his rights as occupying claimant are adjusted and his improvements paid for as in this act provided.

Dispossession.

(5145) § **2.** When an occupant of land or lots other than public domain has color of title thereto, and has in good faith made any valuable improvements thereon and is afterwards in any action found not to be the rightful owner thereof, he shall not be deprived of the possession of the property until the provisions of this act have been complied with.

Improvements, recovery of value

(5146) § **3.** Any person occupying land or lots as provided in section one or two, shall be allowed sixty days after the final determination that he is not entitled to the possession of the same, in which to file his petition for the recovery of the value of the improvements by him so made upon the land or lots, which petition must be filed in the office of the clerk of the district court of the county in which the land or lots is located, and during said sixty days no execution shall issue for his removal therefrom, or the occupying claimant may file his petition as a counter-claim in any action at law brought against him to recover the land or lots, but such counter-claim shall not be tried until there

is a finding that the occupying claimant is not entitled to the land or lots in controversy.

Counter-claim, petition.

(5147) § **4.** Such petition or counter-claim must set forth the ground on which the occupying claimant seeks relief, stating the judgment or finding of the land officers of the United States against him, or judgment of the proper court and stating as accurately as possible the circumstances under which he improved the land or lots and the value of the improvements upon the land or lots as well as the value of the same apart from the improvements.

Joinder of issue, costs, etc.

(5148) § **5.** Summons shall issue and be served, and issues thereon shall be joined and the cause be tried as in ordinary actions, and if the value of the land or lots or improvements is in controversy, the separate value of each must be ascertained and fixed by the verdict of the jury and judgment of the court, and the costs in such cases may be apportioned in such manner as the courts may deem just and proper.

Taking property.

(5149) § **6.** The claimant to the land or lots may thereupon pay into court the value of the improvements as fixed by the judgment and take the property; should he fail to do this after a reasonable time, to be fixed by the court, the plaintiff may take the property upon paying the value of the land or lots aside from the improvements.

Tenants in common.

(5150) § **7.** If this be not done in a reasonable time, to be fixed by the court, the parties will be held to be tenants in common of the land or lots including the improvements, each holding an interest proportionate to the value of his property as ascertained by the judgment, and may maintain action for partition as between themselves.

Tax sales.

(5151) § **8.** The purchaser in good faith at any judicial or tax sale made by the proper officer, has color of title within the meaning of this act, whether such person or officer has sufficient authority to sell or not, unless such want of authority was known to such person at the time of the sale. The rights of such purchaser shall pass to his assignee or representatives in all cases.

Title by occupancy.

(5152) § **9.** Any person has also such color of title who has occupied the tract of land or lots by himself, or by those under whom he claims, for the term of five years, if he or those under whom he claims have at any time during such occupancy with the knowledge or consent expressed or implied of the real owner made any valuable improvements thereon, or if he or those under whom he claims have at any time during such occupancy paid the ordinary taxes assessed by the county for any one year, and two years thereafter have elapsed without the payment or proffer of repayment of the same by the owner of the land or lots, and such occupancy is continued up to the time suit is brought in which the recovery of the same is obtained; but nothing in this act shall be construed to give tenants color of title against their landlords.

Claimant, how possessed.

(5153) § **10.** If the value of the improvements, as found by the judgment, be paid by the claimant of the land or lots, he shall be entitled to an order and execution for the possession of the same.

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Cause, when docketed.

(5154) § **11.** If the occupying claimant pay the value of the land or lots as fixed by the judgmemt, the cause shall be docketed and proceeded with at the next term of court, without further notice, and a decree entered quieting the title to the land or lots in the occupying claimant, his heirs or assigns.

Improvements, date of.

(5155) § **12.** The occupying claimant shall not recover for the improvements made upon the land or lots after the same has been awarded to the adverse party, but he may recover for all improvements made in good faith before such adjudication is had.

Rent, a set-off.

(5156) § **13.** The claimant of the land or lots shall be entitled to the rental value of the same in the condition it was before any improvements of the occupying claimant were placed thereon, which rental value may be set off against the value of the improvements at the time of the trial, and the judgment shall be for the value of the improvements less the rental value so found.

ARTICLE 43.—TIME IN WHICH ACTIONS MAY BE BROUGHT

AN ACT to Prescribe the Time in which Civil Actions May be Brought.

[Took effect December 25, 1890.]

SECTION.

1. Five year's limitation.
2. Time of commencing civil action.
3. Fraud, mistake, trespass.
4. Current account.
5. Delivery of summons.
6. Period of limitation and non-residents.
7. Action barred by previous residence.
8. Limitation extended for insane and minors.
9. Death of party entitled to action.
10. Failure to prosecute, second suit.
11. Circulating mediums exempt.
12. Cause of action revived by written admission of debt.
13. Counter claim not baired, a defense.
14. Statute of limitation, when inoperative.
15. Same, when first in effect.
16. School fund exempt.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Five years limitation.

(5157) § **1.** No action shall be brought within this Territory to revive any judgment rendered in any court in this Territory unless commenced within five years after the same was originally rendered, and then such judgment may be revived and have such force and effect as when rendered.

Time of commencing action.

(5158) § **2.** The following actions may be brought within the time herein limited respectively after their causes accrue and not afterwards, except when otherwise specially declared: Actions founded on injuries to the person or reputation, whether based on contract or tort, or for a statute penalty, or on judgments of foreign courts within two years. Action to enforce a mechanic's lien within one year from the filing of the statement for such lien. Those against a sheriff or other public officer, growing out of a liability incurred by the doing of an act in an official capacity, or by the omission of an official duty, including the non-payment of money collected on execution within three years. If founded on any unwritten contract, those brought

for injuries to property or for relief on the ground of fraud, and in aid of other actions not otherwise provided for in this act, within three years. Those founded on written contracts, and those brought for the recovery of real property within five years. Those founded on a judgment of a court of the United States within twenty years.

Fraud, mistake, trespass

(5159) § **3.** In actions for relief on the ground of fraud or mistake, and in actions for trespass to property, the cause of action shall not be deemed to have accrued until the fraud, mistake or trespass complained of shall have been discovered by the party aggrieved.

Current account

(5160) § **4.** When there is a continuous open current account, the cause of action shall be deemed to have accrued on the date of the last item of debit or credit entered therein as proved on the trial.

Delivery of summons

(5161) § **5.** The delivery of the summons to the sheriff or other officer of the proper county, with intent that it shall be served immediately, which intent shall be presumed unless the contrary appear, or the actual service of the summons by another person, or the filing of the petition in court, is a commencement of the action.

Non-resident.

(4162) § **6.** The time which the defendant is a non-resident of the Territory shall not be included in computing any of the periods of limitation above prescribed.

Action barred by previous residence

(5163) § **7.** When a cause of action has been fully barred by the laws of any country or state where the defendant has previously resided, such bar shall be a full and complete defence, but this section shall not apply to causes of action arising within this Territory.

Limitation for insane and minors.

(5164) § **8.** The time limited for actions herein shall, in favor of minors as defined by this act, or insane persons, be extended so that they shall have one year after the termination of such disability within which to commence their action.

Death of party entitled to action

(5165) § **9.** If the person entitled to bring any action [die] within one year prior to the expiration of the limitation above provided, the limitation shall not apply until one year after such death.

Failure to prosecute, second suit

(5166) § **10.** If after the commencement of an action, the plaintiff fail therein for any cause except negligence in its prosecution, and a new suit be brought within six months thereafter, the second suit shall, for the purpose herein comtemplated, be deemed a continuation of the first.

Circulating medium exempt.

(5167) § **11.** The above limitations and provisions shall not apply to evidences of debt intended to circulate as money, but shall, in other respects, be applicable to all actions brought by or against all bodies corporate or politic, except when otherwise expressly declared.

Cause of action revived.

(5168) § **12.** Causes of action founded on contract, are revived by an admission that the debt is unpaid, as well as by a new promise to pay the same, but such admission or new promise must be in writing and signed by the party to be charged thereby.

Counter-claim

(5169) § **13.** A proper counter-claim may be pleaded as a de-

fense to any cause of action, notwithstanding the same is barred by the provisions of this article, if such counter-claim so pleaded was the property of the party pleading it at the time it became barred, and the same was not barred at the time the claim sued on originated; but no judgment thereon, except for costs, can be rendered in favor of the party pleading the same.

Statute of limitation, inoperative.

(5170) § **14**. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of such injunction or prohibition shall not be a part of the time limited for the commencement of the action, and as to that action while so enjoined or prohibited, the statute of limitation shall not run.

Same, when first in effect.

(5171) § **15**. The statute of limitations shall not be held to have commenced running against any action accruing to a party within the Territory of Oklahoma or in the Indian Territory after the opening of the Oklahoma lands to settlement, until the 2nd day of May, 1890.

School fund exempt.

(5172) § **16**. The provisions of this act shall not be applicable to any action brought on any contract for part of the school fund.

CHAPTER LXXI.—PROCEDURE—CIVIL, BEFORE JUSTICE.

[Took effect December 25, 1890.]

ARTICLE.
1. Jurisdiction of justices' courts.
2. Place of trial.
3. Manner of commencing actions.
4. Pleadings.
5. Attachments.
6. Claim and delivery.
7. Judgment by default.
8. Time of trial and postponements.
9. Trials.
10. Judgments other than by default.
11. Executions.
12. Contempts.
13. Dockets of justices.
14. Appeals.
15. Collection of compensation for personal services.
16. Forcible entry and detention of property.
17. General provisions.
18. Justices' quarterly report to county board.

ARTICLE 1.—THE JURISDICTION OF JUSTICE'S COURTS.

SECTION.
1. Justices' office kept where.
2. Civil jurisdiction of justices classified.
3. Criminal jurisdiction.

When justices shall keep their offices.

(5173) § **1.** Justices of the peace must keep their offices and hold their courts at some place selected by them, in their respective townships and counties, in and for which they may be elected and these courts are always open for the transaction of business.

Civil jurisdiction of courts of justices of the peace classified and limited.

(5174) § **2.** The civil jurisdiction of these courts, within their respective counties, extends:

First. To an action arising on contract, for the recovery of money only, where the sum claimed does not exceed one hundred dollars.

Second. To an action for damages for injury to the person or for taking or detaining personal property, or for injuring personal property, or for an injury to real property, where the title or boundary of such of such real property does not in anywise come in question, and where the damages claimed do not exceed one hundred dollars.

Third. To an action for a fine, penalty or forfeiture, not exceeding one hundred dollars, given by statute or the ordinance of an incorporated city or town.

Fourth. To an action upon a bond or undertaking conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due.

Fifth. To an action to recover the possession of personal property when the value of such property does not exceed one hundred dollars.

Sixth. To take and enter judgment on the confession of a de-

fendant when the amount confessed does not exceed one hundred dollars.

Seventh. To actions for forcible entry and detainer, or detainer only of real property, where the title or boundary thereof in no-wise comes in question.

Criminal jurisdiction.

(5175) § **3.** These courts shall have criminal jurisdiction to try and determine all cases of misdemeanor committed within their respective counties not indictable where the punishment is a fine not exceeding one hundred dollars, or imprisonment in the county jail for a period not exceeding thirty days, or both such fine and imprisonment. And as to all public offences which are indictable, they have the power of committing magistrate.

ARTICLE 2.—PLACE OF TRIAL.

SECTION.
1. Actions commenced and tried, where.
2. Causes for change of place of trial.
3. But one change, when; where case shall be sent.
4. Proceedings on change of place.
5. Jurisdiction of new court.
6. Title to lands cannot be tried by justice.

Actions commenced and tried, where.

(5176) § **1.** Actions in justices' courts must be commenced, and subject to the right to change the place of trial as hereinafter provided, must be tried in the county where the defendant resides, or in which he may be summoned.

Causes for change of place of trial.

(5177) § **2.** The court may at any time before the trial, on motion, change the place of trial in the following cases:

First. Where it appears to the satisfaction of the justice before whom the action is pending, by affidavit of either party, that such justice is a material witness for either party.

Second. Where either party makes and files an affidavit, that he believes he cannot have a fair and impartial trial, before such justice, by reason of the interest, prejudice or bias of the justice.

Third. When from any cause the justice is disqualified from acting.

Fourth. When the justice is sick or unable to act.

But one change when, where case shall be sent

(5178) § **3.** When the court orders the place of trial to be changed, the action must be transferred to a justice's court the parties may agree upon; if they do not so agree, then the party not applying for the change, may file his affidavit alleging against any one justice to whom it is proposed to transfer the cause, the existance of any of the grounds for the change named in section 5177, and the cause shall not then be transferred to that justice, but shall be sent to the next nearest justice in the same county. If after such changes are granted, it be made to appear to the justice that any justice other than the ones before objected to, is related to either of the parties by consanguinity or affinity within the fourth degree, or is a witness, or has been employed as an attorney in the action the cause shall be transferred to the next nearest justice in the county, against whom none of the last named objections do exist. Thereafter no changes of place of trial shall be allowed in the cause. Such change shall not be allowed before

the time set for hearing the cause unless the parties sooner appear.

Proceedings on change of place,

(5179) § **4.** After an order has been made transferring the action for trial to another court the following proceedings must be had:

First. The justice ordering the transfer must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying of one dollar for the transcript, all the papers in the action, together with a certified transcript from his docket of the proceedings therein.

Second. Upon the receipt by him of such papers, the justice of the court to which the case is transferred, must proceed with the trial, and no notice of the time of trial need be given, but the justice if unable to proceed with the trial, may set a day for its hearing, and if the parties be not then present, shall issue notice at least one day before the time fixed for the trial, and the manner of service shall be the same as in cases of service of a summons.

Jurisdiction of new court.

(5180) § **5.** From the time the order changing the place of trial is made, the court to which the action is thereby transferred, has the same jurisdiction over it as though it had been commenced in such court.

Title to lands cannot be tried by justice.

(5181) § **6.** The parties to an action in a justice's court cannot introduce evidence upon any matter wherein the title to, or boundary of, real property in anywise comes in question; and if it appear from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title to, or boundary of, real property, in anywise, the justice must suspend all further proceedings in the action, and certify the pleadings, and if any of the pleadings are oral, a transcript of the same from his docket, to the clerk of the district court of the county or subdivision, on the payment by the plaintiff of one dollar for such transcript, and all costs accrued before such justice; and from the time of filing such pleadings or transcript with the clerk, the district court has over the action the same jurisdiction as if it had been commenced therein.

ARTICLE 3.—MANNER OF COMMENCING ACTIONS.

SECTION.
1. Action commenced, how.
2. Parties in person or by attorney.
3. Infants' appearance.
4. Summons must state what.
5. Time for defendant's appearance
6. Service of Summons, limitation of time.
7. Who may serve summons, by publication.
8. One hour for appearance.

Action commenced, how.

(5182) § **1.** An action in a justice's court is commenced by issuing the summons, or by the voluntary appearance and pleading of the parties.

Parties in person or by attorney.

(5183) § **2.** Parties in justices' courts may appear and act in person or by attorney; and any person, except by whom the summons or jury process was served, may act as attorney.

Infant's appearance,

(5184) § **3.** When an infant is a party, he must appear either

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by his general guardian, if he have one, or by a guardian appointed by the justice, as follows:

First. If the infant be plaintiff the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, upon the application of a relative or friend.

Second. If the infant be defendant, the guardian must be appointed at the time the summons is returned, or before the answer. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, otherwise the justice must make the appointment.

Summons must state, what.

(5185) § **4.** The summons must be directed to the defendant and signed by the justice, or the plaintiff, or his attorney, and must contain:

First. The title of the court, name of the county or township in which the action is commenced, and the names of the parties thereto.

Second. A sufficient statement of the cause of action, in general terms to appraise the defendant of the nature of the claim against him.

Third. A direction that the defendant appear and answer before the justice at his office, at a time specified in the summons.

Fourth. In an action arising on a contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum claimed by him, stating it.

Fifth. In other actions, a notice that unless the defendant so appears and answers, the plaintiff will apply to the court for the relief demanded. If the plaintiff has appeared by attorney, the name of the attorney must be indorsed on the summons.

Time for defendant's appearance.

(5186) § **5.** The time specified in the summons for the appearance of the defendant, shall in all cases be not less than three nor more than twelve days from the date of the service of the same.

Limitation of time of service of summons, when service in another county

(5187) § **6.** The summons cannot be served out of the county of the justice before whom the action is brought, except where the action is brought upon a joint contract or obligation of two or more persons who reside in different counties, and the summons has been served upon the defendant resident of the county, or found therein, in which case the summons may be served upon the other defendants out of the county, When the defendant resides in the county, or is summoned therein, the summons cannot be served within two days of the time fixed for the appearance of the defendant; when he resides out of the county, and the summons is served out of the county, the summons cannot be served within seven days of such time.

Who may serve summons by publication

(5188) § **7.** The summons may be served by a sheriff, constable or any other person not a party to the action and must be served and returned in the same manner as summons in the district court, or in actions of attachment, it may be served by publication as provided by the civil procedure, and so far as they relate to the publication of summons, they are made applicable to

justices' court, the word "justice," being substituted for the word, "judge," whenever the latter word occurs: *Provided*, That when a summons is to be served out of the county in which it was issued the summons shall have attached to it a certificate under seal by the clerk of the district court to the effect that the person issuing the same was an acting justice of the peace at the date of the summons: *Provided, however*, That whenever any summons or other process shall be served by any person other than a sheriff or other duly elected and qualified officer, no fees shall be allowed therefor, either for mileage in travelling or making such service, or for serving said summons or process.

One hour for appearance.

(5189) § **8.** The parties are entitled to one hour in which to appear after the time fixed in the summons but are not bound to remain longer than that time unless both parties have appeared, and the justice, being present, is engaged in the trial of another cause.

ARTICLE 4.—PLEADINGS.

SECTION.
1. Manner of pleading in justice's court.
2. Order of pleading.
3. Complaint is what.
4. Demurrer, when.
5. Answer, contain what.
6. Demurrer to the answer.
7. Proceedings on demurrer.
8. Amendments to pleadings.
9. Pleading to the amended pleading.

Manner of pleading in justices court.

(5190) § **1.** Pleadings in justices' court:

First. Are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended.

Second. May be oral or in writing.

Third. Must be verified.

Fourth. If in writing must be filed with the justice.

Fifth. If oral an entry of their substance must be made in the docket and sworn to before the summons is issued.

Order of pleading.

(5191) § **2.** The pleadings are:

First. The complaint by plaintiff.

Second. A motion or demurrer to the complaint.

Third. The answer by the defendant.

Fourth. A motion or demurrer to the answer.

Fifth. Reply to the answer.

Complaint is what

(5192) § **3.** The complaint in justices' courts is a concise statement of the facts constituting the plaintiff's cause of action.

Demurrer, when.

(5193) § **4.** The defendant may, at any time before answering, demur to the complaint.

Answer, contain what.

(5194) § **5.** The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue; and also a statement, in a plain and direct manner, of any other facts constituting a defense or counter-claim, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

Demurrer to the answer.

(5195) § **6.** When the answer contains new matter in avoidance, or constituting a defense or a counter-claim, the plaintiff

may, at any time before the trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.

Proceedings on the demurrer.

(5196) § **7**. The proceedings on demurrer are as follows:

First. If the demurrer to the complaint is sustained, the plaintiff may, within such time, not exceeding two days, as the court allows, amend his complaint.

Second. If the demurrer to a complaint is overruled, the defendant may answer forthwith.

Third. If the demurrer to an answer be sustained, the defendant may amend his answer within such time, not exceeding two days, as the court may allow.

Fourth. If the demurrer to an answer is overruled, the plaintiff may, if the answer contain new matter, reply forthwith. If the answer does not contain new matter, the action must proceed as if no demurrer had been interposed.

Amendments to pleadings, when allowed.

(5197) § **8**. Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after the issue, and it appears to the satisfaction of the court by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment must be granted. The court may also, in its discretion, when an adjourment will, by the amendment, be rendered necessary, require, as a condition to the allowance of such amendment, made after issues joined, the payment of such costs to the adverse party as he may be put to by reason of such adjournment. The court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default, taken against him by his mistake, inadvertance, surprise, or excusable neglect; but the application for such relief must be made within ten days after the entry of the judgment, and upon an affidavit showing good cause therefor.

Pleading to the amended pleading.

(5198) § **9**. When pleading is amended, the adverse party may answer or demur to it within such time, not exceeding two days as the court may allow.

ARTICLE 5.—ATTACHMENTS.

SECTION.
1. When writ of attachment may issue.
2. Undertaking by the plaintiff.
3. Requisites of the writ.
4. Service and return of the writ.

When writ of attachment may issue

(5199) § **1**. In the cases mentioned in the law relating to attachments in civil procedure, a writ to attach the personal property of the defendant must be issued by the justice at the time of, or after issuing the summons and before answer, on receiving an affidavit, by or on behalf of the plaintiff, stating the same facts as are required to be stated by the affidavit specified in the article on attachments in civil procedure.

Undertaking by plaintiff.

(5200) § **2**. Before issuing the writ, the justice must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties in a sum not less than fifty nor more than three hundred dollars, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to

the defendant, and all damages which may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Requisites of the writ.

(5201) § **3.** The writ may be directed to the sheriff or any constable of the county, and must require him to attach and safely keep all the personal property of the defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand besides costs; in which case, to take such undertaking.

Service and return of writ.

(5202) § **4.** The writ may be served by the sheriff or any constable of the county in which it is issued, and returned in the same manner as warrants of attachment are served and returned in actions in the district court, and with the same force and effect.

ARTICLE 6.—CLAIM AND DELIVERY OF PERSONAL PROPERTY.

SECTION.
1. Action for claim and delivery.

Action for claim and delivery.

(5203) § **1.** In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons, or at any time thereafter before answer, claim the delivery of such property to him, and the provisions in relation to the recovery of of the possession of personal property in civil procedure is applicable to such claim when made in justices' courts, the powers therein given and the duties imposed on sheriffs being extended to constables and the word "justice" substituted for "judge."

ARTICLE 7.—JUDGMENT BY DEFAULT.

SECTION.
1 Proceedings upon default.
2. Default presumed, when.

Proceedings upon default.

(5204) § **1.** When the defendant fails to appear and answer or demur, at the time specified in the summons, or within one hour thereafter, then upon proof of service of the summons, the following proceedings must be had:

First. If the action is based upon a contract and is for the recovery of money or damages only, the court must render judgment in favor of plaintiff for the sum specified in the summons.

Second. In all other actions the court must hear the evidence offered by the plaintiff, and must render judgment in his favor for such a sum, not exceeding the amount stated in the summons, as appears by such evidence to be just.

Default presumed, when.

(5205) § **2.** In the following cases the same proceedings must be had, and judgment must be rendered in like manner, as if the defendant had failed to appear and answer or demur:

First. If the complaint has been amended, and the defendant fails to answer it as amended within the time allowed by the court.

Second. If the demurrer to the complaint is overruled, and the defendant fails to answer at once.

Third. If the demurrer to the answer is sustained and the defendant fails to amend the answer within the time allowed by the court.

ARTICLE 8.—TIME OF TRIAL AND POSTPONEMENTS.

SECTION.
1. When trial shall commence.
2. Court may postpone trial.
3. Postponement by consent.
4. Postponement on application of party.
5. No adjournment for more than ten days

When trial shall commence.

(5206) § **1.** Unless postponed as provided in this article, or unless transferred to another court, the trial of the action must commence at the expiration of one hour from the time specified in the summons for the appearance of defendant, and the trial must be continued without adjournment for more than twenty-four hours at any one time, until all issues therein are disposed of.

Court may postpone trial.

(5207) § **2.** The court may, of its own motion, postpone the trial:

First. For not exceeding one day, if, at the time specified in the summons, or by an order of the court for the trial, the court is engaged in the trial of another action.

Second. For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment, or to plead, a postponement is rendered necessary.

Third. For not exceeding three days, if the trial is upon issues of fact, and a jury has been demanded.

Postponement by consent.

(5208) § **3.** The court may by consent of the parties, given in writing or in open court, postpone the trial to a time agreed upon by the parties.

Postponement on application of party, requisites.

(5209) § **4.** The trial may be postponed upon the application of either party, for a period not exceeding sixty days:

First. The party making the application must prove, by his own oath or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so.

Second. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, may be then taken by deposition before the justice, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objections as if the witness was produced; but the court may require the party making the application to state,

upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

Third. If the trial be postponed the depositions of witnesses residing out of the county or Territory may be taken either upon commission issued by the justice, or upon notice to take depositions in the same manner as is provided by civil procedure; and such depositions shall, when completed, be directed to the justice, and be published by the justice in the same manner as depositions are published by the clerk of the district court.

No adjournment for more than ten days, exception.

(5210) § **5.** No adjournment must, unless by consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking in an amount fixed by the justice, with two sureties, to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

ARTICLE 9.—TRIALS.

SECTION.
1. Issues classified.
2. Issues of law.
3. Issues of fact.
4. Issues of law tried by the court.
5. Issues of fact tried by the jury.
6. Jury may be waived.
7. Failure of one party to appear.
8. Jury, how drawn.
9. Challenges and talesmen.
10. Jury less than twelve.
11. Oath of jury.
12. Production and inspection of papers.
13. Genuineness admitted if not denied.

Issues classified

(5211) § **1.** Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are two kinds:

First. Of law; and,

Second. Of fact.

Issues of law.

(5212) § **2.** An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issues of fact.

(5213) § **3.** An issue of fact arises.

First. Upon a material allegation in the complaint, controverted by the answer; and,

Second. Upon new matter in the answer, except an issue of law is joined thereon.

Issues of law tried by court,

(5214) § **4.** An issue of law must be tried by the court.

Issue of fact tried by jury,

(5215) § **5.** An issue of fact must be tried by a jury, unless a jury is waived, in which case it must be tried by the court.

Jury may be waived

(5216) § **6.** A jury may be waived:

First. By consent of parties, entered in the docket.

Second. By a failure of either party to demand a jury before the commencement of the trial of an issue of fact.

Third. By the failure of either party to appear at the time fixed for the trial of an issue of fact.

Failure of one party to appear,

(5217) § **7.** If either party fails to appear at the time fixed

for trial, the trial may proceed, at the request of the adverse party.

Jury, how drawn.

(5218) § **8.** When the value in controversy or the sum demanded exceeds twenty dollars, either party may demand a jury, and upon such demand the justice shall write down the names of eighteen persons, residents of the county, and having the qualifications of jurors in the district court, from which list of names each party, the plaintiff beginning, may strike out six names alternately, and in case of the absence of either party, or his refusal to strike out, the justice may strike out of such list such names, and the justice shall at once issue his venire directed to the sheriff or any constable of the county, commanding him to summon the six persons whose names remain upon the list as jurymen.

Challenges and talesmen.

(5219) § **9.** In case any juror summoned shall fail to attend, the justice shall direct the sheriff or any constable to return forthwith a sufficient number of talesmen, having the qualifications of jurors to complete the panel. Challenges to talesmen shall be admitted in the same manner, and for the same causes as in the district courts in civil actions, and must be tried in a summary manner by the justice, who may examine the juror challenged, or other witnesses under oath.

Jury less than welve.

(5220) § **10.** Parties may agree that the jury may consist of a less number than six jurors, but an agreement to that effect must be in writing, signed by the parties and filed with the papers in the case, or made in open court, and a minute thereof entered by the justice in his docket.

Oath of jury.

(5221) § **11.** The justice shall administer to the jurors the same oath as is prescribed for jurors in civil actions in the district court. Five jurors may in all civil cases tried in a justice's court return a verdict.

Production and inspection of papers.

(5222) § **12.** When the cause of action or counter-claim arises upon an account or instrument for the payment of money only, the court at any time before the trial may by an order under his hand require the original to be exhibited to the inspection of and a copy to be furnished to the adverse party at such time as may be fixed in the order; or if such order is not obeyed, the account or instrument cannot be given in evidence.

Genuineness admitted if not denied.

(5223) § **13.** If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons the original or a copy of the promissory note, bill of exchange, or other written obligation for the payment of money upon which the action is brought the defendant is deemed to admit the genuineness of the signatures of the makers, indorsers or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

SECTION.
1. Judgment by confession.
2. Dismissal of action.
3. Judgment entered, execution.
4. On trial by the court.
5. Action to recover personal property.
6. Excess may be remitted.
7. Offer of judgment, costs.
8. Costs taxed, how.
9. Transcript of judgment.

Judgment by confession.

(5224) § **1**. Judgments upon confession may be entered up in any justice's court specified in the confession.

Dismissal of action.

(5225) § **2**. Judgment that the action be dismissed, without predjudice to a new action, may be entered, with costs, in the following cases:

First. When the plaintiff voluntarially dismisses the action before it is finally submitted.

Second. When he fails to appear at the time specified in the summons, or at the time to which the action has been postponed, or within one hour thereafter.

Third. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court.

Judgment entered; execution.

(5226) § **3**. When a trial by jury has been had, judgment must be entered by the justice within twenty-four hours in conformity with the verdict, but execution may on application of either party be issued at once.

In trial by the court.

(5227) § **4**. When the trial is by the court, judgment must be entered at the close of the trial.

Actions to recover personal property.

(5228) § **5**. In actions to recover the possession of personal property, the judgment must be entered substantially in the form required by the provisions relating to the recovery of the possession of personal property in civil procedure.

Excess may be remitted.

(5229) § **6**. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

Costs taxed, how.

(5230) § **7**. If the defendant at any time before the trial offer in writing to allow judgment to be taken against him for a specified sum the plaintiff may immediately have judgment therefor, with the costs then accrued, but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer the cannot recover costs, but costs must be adjudged against him and if he recover costs, [but costs must be adjudged against him, and if he recovers] be deducted from his recovery. The offer and failure to accept it cannot be given in evidence nor affect the recovery otherwise than as to costs, and cannot be mentioned on the trial.

Costs taxed, how.

(5231) § **8**. The justice must tax and include in the judgment the costs allowed by law to the prevailing party.

Transcript of judgment.

(5232) § **9**. The justice on the demand of a party in whose favor judgment is rendered must give him a certified transcript thereof, on the payment to him of all costs accrued before him, and one dollar for such transcript.

SECTION.
1. Execution must issue within five years.
2. Requisites of execution.
3. Execntion on money judgment.
4. Execution for possession of peisonalty.
5. Execution in case of forcible entry and detainer.
6. Renewal of execution.
7. Sale of personalty under execution.

Execution must issue within five years.

(5233) § **1.** Execution for the enforcement of a judgment of a justice's court may be issued by the justice who entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment, except when it has been taken to the district court on error or appeal, or docketed therein.

Requisites of the execution.

(5234) § **2.** The execution must be directed to the sheriff or any constable within the county, and must be subscribed by the justice and bear the date of its delivery to the officer. It must intelligibly refer to the judgment, stating the names of the parties thereto. in whose favor, against whom, the time when, the county where, and the name of the justice before whom the judgment was rendered; and it must be made returnable to the justice within thirty days after its date.

Execution on money judgment.

(5235) § **3.** An execution issued upon a judgment for a sum of money must state in the body thereof the sum actually due upon the judgment, and it must substantially require the officer to satisfy the judgment, together with interest and costs, out of the personal property of the judgment-debtor; and to bring the money before the justice by the return day of the execution, to be rendered by the justice to the party who recovered the judgment. If the judgment was rendered for a fine, penalty or forfeiture of undertakings and bonds, or of recognizances taken or entered in a criminal case, the justice must indorse that fact on the execution.

Execution for possession of personalty.

(5236) § **4.** An execution entered upon a judgment for the delivery of the possession of personal property, shall substantially require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto; and may, at the same time require the officer to satisfy any costs or damages recovered by the judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered to be specified therein, if a delivery cannot be had.

Execution in case of forcible entry and detainer.

(5237) § **5.** An execution issued upon a judgment in an action of forcible entry and detainer, or detainer only, of real property, shall substantially require the officer to deliver the possession of the premises, particularly describing them, to the party entitled thereto, and may at the same time require the officer to satisfy the costs out of the personal property of the party against whom the judgment was rendered.

Renewal of execution,

(5238) § **6.** An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date

thereof, and subscribed by the justice. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterward issued.

Sale of personalty under execution.

(5239) § **7**. The provisions of civil procedure relating to the levy and sale or delivery of personal property, so far as the same are applicable and not inconsistent with the provisions of this act, apply to and govern the levy, sale and delivery of personal property, under execution issued by a justice of the peace. And the constable, when the execution is directed to him, is vested for that purpose with all the powers of the sheriff: *Provided*, That notice shall not be published in a newspaper, but shall be given by posting for ten days in five public places within the county, one of which shall be at the office of the justice issuing the execution.

ARTICLE 12.—CONTEMPTS IN JUSTICES' COURTS.

SECTION.
1. Acts that constitute contempts.
2. Summary punishment.
3. When contempt not in presence of court.
4. Penalty limited.
5. Must be entered in docket.

Acts that constitute contempt.

(5240) § **1**. A justice may punish as for contempt, persons guilty of the following acts, and no other:

First. Disorderly, contemptuous, or insolent behavior towards the justice while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.

Second. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding.

Third. Disobedience or resistence to the execution of a lawful order or process, made or issued by him.

Fourth. Disobedience to a subpœna duly served, or refusing to be sworn or to answer as a witness.

Fifth. Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

Summary punishment.

(5241) § **2**. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily; to that end an order must be made, reciting the facts as they occurred, and adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

When contempt not in presence of court

(5242) § **3**. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defence or excuse must be given. The justice may, thereupon, discharge him, or may convict him of the offense.

Penalty limited.

(5243) § **4**. A justice may punish for contempts, by fine or

imprisonment, or both; such fine not to succeed, in any case, one hundred dollars, and such imprisonment one day.

Must be entered in docket.

(5244) § **5.** The conviction, specifying particularly the offense and the judgment thereon, must be entered by the justice in his docket.

ARTICLE 13.—DOCKETS OF JUSTICES.

SECTION.
1. Justice to keep a docket; entries therein.
2. Entries, when and how made.
3. Index to docket.
4. Records and files to go to successor.
5. Vacancy, books to other justice.
6. Powers of justice receiving docket.

Justice to keep a docket; entries therein

(5245) § **1.** Every justice must keep a book, denominated a docket, in which he must enter:

First. The title of every action or proceeding.

Second. The object of the action or proceeding; and if a sum of money be claimed, the amount thereof.

Third. The date of the summons, and the time of its return; and if a writ of attachment be issued, a statement of the fact.

Fourth. The time when the parties, or either of them, appear, or their non-appearence, if default be made; a minute of the pleadings and motions, if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading.

Fifth. Every adjournment, stating on whose application, and to what time.

Sixth. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and time appointed for the return of the jury and for the trial.

Seventh. The names of the jurors who appear and are sworn, and the names of all witnesses sworn and at whose request.

Eighth. The verdict of the jury and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge.

Ninth. The judgment of the court specifying the costs included and the time when rendered.

Tenth. The issuing or the execution when issued and to whom, the renewals thereof if any and when made, and a statement of any money paid to the justice when and by whom.

Eleventh. The receipt of a notice of appeal, if any be given, and of the appeal bond if any be filed.

Entries, when and how made.

(5246) § **2.** The several particulars in the last section specified must be entered under the title of the action to which they relate, and unless otherwise in this chapter provided at the time when they occur. Such entries in a justice's docket, or a transcript thereof certified by the justice, or his successor in office, are *prima facie* evidence of the facts so stated.

Index to docket.

(5247) § **3.** A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index, in the alphabetical order of the first letter of the family name.

Records and files to go to successor.

(5248) § **4.** Every justice of the peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors, or any other which may be in his custody to be kept as public records.

When there is a vacancy books go to other justice.

(5249) § **5.** If the office of a justice becomes vacant by his death, removal or otherwise, before his successor is elected or qualified, the docket and papers in possession of such justice must be deposited in the office of some other justice in the township or county, to be by him delivered to the successor of such justice.

Powers of justice receiving docket,

(5250) § **6.** Any justice with whom the docket of his predecessor, or of any other justice, is deposited, has and may exercise over all actions and proceedings entered in such docket, the same jurisdiction as if originally commenced before him. In case of the creation of a new county, or the change of the boundary between two counties, any justice in whose hands the docket of a justice formerly acting as such within the same Territory may come, is, for the purposes of this section, considered the successor of such former justice.

ARTICLE 14.—APPEALS.

SECTION.

1. Appeal from judgment in justices' court.
2. Appeal on questions of law, statement to be prepared.
3. Appeal on questions of fact.
4. Justice to transmit certified copy of docket.
5. Undertaking on appeal is for stay of proceedings.
6. Undertaking in forcible entry and detainer.
7. Order for stay of execution.
8. Powers of district court on appeal.

Appeal from judgment in justice's court.

(5251) § **1.** Any party dissatisfied with a judgment rendered in a civil action in a justice's court, may appeal therefrom to the district court of the county or subdivision at any time within thirty days after the rendition of the judgment. The appeal is taken by serving a copy of the notice of appeal on the adverse party or his attorney, and by filing the notice of appeal with the justice. The notice must state whether the appeal is taken from the whole or a part of the judgment; and if from a part, what part, and whether the appeal is taken on questions of law or fact, or both.

Appeal on question of law; statement to be prepared.

(5252) § **2.** When a party appeals to the district court on questions of law alone, or desiring a review therein, upon the evidence appearing on the trial below, either of questions of facts or law, he must, within ten days from the rendition of judgment, prepare a statement of the case and file the same with the justice. The statement must contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments. The proposed statement and amendments must be settled by the justice, and if no amendments be filed the

original statement stands as adopted. The statement thus adopted or as settled by the justice, with a copy of the docket of the justice, and all motions filed with him by the parties during the trial and the notice of appeal, may be used on the hearing of the appeal before the district court.

Appeals on question of fact

(5253) § **3.** When a party appeals to the district court on questions of fact, or on question of both law and fact, and demands in his notice of appeal a new trial in the district court, no statement must be made, but the action must be tried anew in that court.

Justice to transmit certified copy of docket.

(5254) § **4.** Upon receiving the notice of appeal, and on payment of one dollar for the return of the justice, and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the justice must within five days transmit to the clerk of the district, if the appeal be on questions of fact or both law and fact, and a new trial in the district court be demanded in the notice of appeal a certified copy of his docket, the pleadings, all notices, motions and other papers filed in the cause, the notice of appeal and the undertaking filed; in all other cases a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; and the justice may be compelled by the district court, by an order entered, upon motion, to transmit such papers and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justice's court.

Undertaking on appeal or for stay of proceedings.

(5255) § **5.** An appeal from a justice's court is not effectual for any purpose, unless an undertaking be filed, with two or more sureties. in the sum of one hundred dollars, for the payment of the costs on the appeal; or if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money; or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment and all costs that may be recovered against him in the action in the district court. When the action is for the recovery of specific personal property the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the district court, and will obey any order made by the court therein. A deposit of the amount of the judgement, including all costs appealed from, or of the value of the property, including all costs in actions for the recovery of specific personal property, with the justice, is equivalent to the filing of the undertaking, and in such cases the justice must transmit the money to the clerk of the district court, to be by him paid out on the order of the court. The adverse party may except to the sufficiency of the sureties

within five days after the filing of the undertaking, and unless they or other sureties justify before the justice before whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given.

Undertaking in forcible entry and detainer.

(5256) § **6**. In judgments for the delivery of possession in actions of forcible entry and detainer, or detainer only, the execution of the same can not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon, and that if the judgment be affirmed, or the appeal be dismissed, he will pay all rents for the use and occupation of the property, and all damages from the time of the appeal until the delivery of the possession thereof.

Order to stay execution.

(5257) § **7**. If an execution be issued, on the filing of the undertaking staying proceedings, the justice must, by order, direct the officer to stay all proceedings on the same. Such officer must, upon payment of his fees for the services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

Powers of district court on appeal.

(5258) § **8**. Upon an appeal heard upon a statement of the case, the district court may review all orders affecting the judgment appealed from, and may set aside, affirm or modify the judgment, or any or all the proceedings subsequent to or dependent upon such judgment, and may, if necessary or proper, order a new trial. When the action is tried anew, upon appeal, the trial must be conducted in all respects as trials in the district court. The provisions of civil procedure as to changing the place of trial, and all the provisions as to trials in the district court, are applicable to trials on appeal in that court. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court, after notice, may order the appeal to be dismissed. Judgments rendered in the district court on appeal, have the same force and effect, and may be enforced in the district court in the same manner, as judgments in actions commenced therein, except that when a new trial is granted the case must be remanded, and the new trial shall be had in the justice's court. No notice of trial and note of issue shall be required to be served or filed in order to bring the cause appealed upon the trial calendar in the district court, but said appeal shall be filed by the clerk, on payment of his costs, and entered upon the calendar, and shall stand for trial as soon as the same is reached in the regular call of the calendar thereafter. If not so filed within fifteen days from the time such appeal was perfected, then the same shall be dismissed by the order of the court at any time thereafter, upon motion of the appellee, after three days notice to the appellant or his attorney.

Chap. 71. ARTICLE 15,—COLLECTION OF COMPENSATION FOR PERSONAL SERVICES.

AN ACT to provide for collection of compensation for personal services.

[Took effect December 25, 1890.]

SECTION.
1. Laborers' claim, petition; attorney's fees.
2. Contents of laborer's claim.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Laborer's claim, petition, attorney's fees.

(5259) § **1**. In all cases where any action is brought by any clerk, servant, nurse or laborer of any kind for compensation claimed, due for personal services performed, by the plaintiff for the defendant, if the amount claimed be less than one hundred dollars, and a recovery be had in such action, the plaintiff shall in addition to the amount due be entitled to recover a judgment against the defendant for an attorney's fee of not less than two dollars and fifty cents, and not more than fifteen dollars for the use and benefit of plaintiff's attorney, together with costs. If, however, the defendant appear before the time set for trial and offer to confess judgment for a sum of money and costs, and the plaintiff on trial fails to recover a greater sum, then no attorney's fees or costs made after the tender shall be taxed against the defendant.

Contents of laborer's claim.

(5260) § **2**. Such laborer shall in his account or petition filed in court, state that the action is brought to recover compensation due for personal services, and the court shall state upon the records that fact, if judgment be recovered, and when an execution is issued thereon, such execution shall be endorsed for personal services and the defendant shall hold no property exempt from levy under such execution, any exemption law to the contrary notwithstanding.

ARTICLE 16,—FORCIBLE ENTRY AND DETENTION OF PROPERTY.

AN ACT regulating proceedings in actions for the forcible entry and detention and forcible detention only of property.

[Took effect December 25, 1890.]

SECTION.
1. Powers of justices of the peace.
2. Tenant's unlawful holding, crop rent.
3. Notice to vacate
4. Summons, when issued, complaint, what contained therein.
5. Summons, contents.
6. Defendant's non appearance.
7. Continuance asked by defendant.
8. Trial without jury.
9. Trial by jury.
10. Judgment for less than claimed.
11. Appeal to district court, stay, bond, exceptions saved.
12. Appeal by defendant.
13. Judgment of restitution, writ of execution.
14. Time of executing writ, stay of proceedings.
15. Tenant's eviction by writ from district court.
16. Repeal.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Powers of justice.

(5261) § **1**. Any justice of the peace within his proper county shall have power to inquire, in the manner hereinafter directed,

as well [as] against those who make unlawful and forcible entry into lands or tenements and detain the same, as against those who having made lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such inquiry in either case that the lands or tenements are held unlawfully, such justice of the peace shall cause the party complaining to have restitution thereof.

Tenants unlawful holding, rent.

(5262) § **2**. A tenant shall be deemed to hold unlawfully whenever he has failed, neglected or refused to pay the rent, or any part thereof, when the same became due and payable, and judgment either before a justice of the peace or in the district court, under this act shall not be a bar to any action afterwards brought by either party: *Provided, however*, That in cases of tenants or agricultural lands where rent, or a part thereof, is payable in kind, the tenant shall not be evicted for non-payment of rent, unless it be so expressly agreed in a written lease.

Notice to vacate.

(5263) § **3**. It shall be the duty of the party desiring to commence an action under this act to notify the adverse party in writing to leave the premises for the possession of which action is about to be brought, which notice shall be served at least three days before commencing the action, by leaving a copy with the defendant or at his usual place of abode.

Summons; complaint.

(5264) § **4**. The summons shall not issue until the plaintiff shall have filed his complaint in writing under oath, with the justice, which shall particularly describe the premises so entered upon or detained, and shall set forth either an unlawful and forcible entry and detention, or an unlawful detention of the premises described therein, and such complaint in a separate paragraph may set forth the amount, if any, due for rent and for damages to the premises and pray for a judgment for the rent due and damages, as well as for restitution of the premises.

Summons; contents.

(5265) § **5**. The summons shall be issued and directed; shall state the cause of complaint, the time and place for trial, and shall be served and returned as in other cases.

Defendant's non-appearance.

(5266) § **6**. If the defendant fail to appear at the time appointed, for trial in the summons, or at any time to which the case may be continued or adjourned, the trial shall proceed in all respects as though he were present,

Continuance, defendant.

(5267) § **7**. No continuance shall be granted at the instance of the defendant unless he give an undertaking to the adverse party with sufficient surety, to be approved by the justice conditioned that the defendant will comply with the judgment that may be rendered against him in such action, unless the defendant have filed an answer under oath denying the material facts set forth in the complaint, and in such case the continuance shall not be for a longer period than eight days without the defendant filing a bond as in this action provided.

Trial without jury.

(5268) § **8**. At the time fixed for the trial of the case, if neither party demand a jury, the justice shall proceed to try the same. If, after hearing the evidence and arguments, he shall be of the opinion that the complaint is not true, he shall render judgment against the plaintiff for costs. If he find the complaint true,

in whole or in part, he shall render such judgment in favor of the plaintiff and against the defendant, as the plaintiff may be entitled to under the complaint and evidence, and the plaintiff shall be entitled to recover double rent from the date of service of the notice to leave the premises, if it be found that the defendant wilfully unlawfully withholds possession of the premises.

Trial with jury.

(5269) § **9.** If a jury be demanded by either party, the proceedings, until the impanelling thereof, shall be the same as in other civil cases; the jury shall be sworn or affirmed to well and truly try the complaint, and render a true verdict. If they find the complaint true, they shall render a general verdict of guilty against the defendant; if they find the complaint not true, they shall render a general verdict of not guilty. If they find the complaint true in part they shall render a verdict to that effect, setting forth the facts they find true, and in either case they shall find the amount of rent, if any, due to the plaintiff and the amount of damages, if any, which the plaintff has sustained. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts authorizing the finding of such verdict had been found by himself to be true.

Judgment for part.

(5270) § **10.** In all actions brought under this act if upon the trial the evidence shows that any portion of the premises described in the complaint and notice are unlawfully withheld by the defendant, the plaintiff shall be entitled to such judgment as though such portion only had been described in such complaint and notice.

Appeal, stay,

(5271) § **11.** Exceptions to the opinion of the justice upon questions of law whether the case is tried with or without a jury may be taken by either party and the proceedings of the justice reviewed by the district court upon a petition in error, or either party may appeal from the judgment rendered by the justice as in other civil cases, but in no case shall such petition in error or appeal operate as a stay of proceedings before the justice unless and until the party aggrieved file a bond with such justice, conditioned for the payment [of such judgment] and costs as may be rendered against him in the district court.

Appeal by defendant.

(5272) § **12.** In all appeals or writs of error to the district court under the provisions of this act, if such appeal or writ of error, be taken by the defendant, and the judgmeut in the action be rendered in said court, against the defendant, such judgment shall include double rent for the time such premises were wilfully and unlawfully withheld by defendant, during the pendency of the appeal or writ of error, and if not wilfully withheld, then only reasonable rent shall be included.

Restitution; execution.

(5273) § **13.** Where a judgment of restitution shall be entered by a justice of the peace, he shall at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon which shall be in the following form as near as practicable:

TERRITORY OF OKLAHOMA, } ss.
.....COUNTY. }

To the constable or sheriff of.....County

Whereas, in a certain action for the forcible entry and detention or the forcible detention, as the case may be, of the following described premises, to-wit:.....lately tried before me, wherein.....was plaintiff, and.....was defendant, judgment was rendered on the.....day of.....A. D....., that the plaintiff has restitution of said premises, and also that he recover of said defendant the sum of.....dollars, and costs in the sum of.....dollars; you are therefore and hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same, also that you levy on the goods and chattles of said defendant and make the amount of the judgment and the costs aforesaid and all accruing costs, and of this writ make legal service and due return.

Witness my hand this.....day of.....A. D....

.....

Justice of the Peace.

Which writ shall be served only in day time.

Executing writ, stay.

(5274) § **14**. The officer shall, within three days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and by collectiug the amount of the judgment and the costs as in other actions, and shall make return of said writ as in other civil actions. If the officer shall receive notice from the justice that the proceedings have been stayed by an appeal or petition in error, he shall immediately delay all further proceedings under the execution, and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ with his proceedings and costs taxed thereon.

Eviction.

(5275) § **15**. If the tenant is evicted by writ from the district court, and on appeal the judgment be in his favor, he shall on proper supplemental plea, filed in the district court, recover judgment for the damages sustained by such wrongful eviction, and if the time of his tenancy has not expired, he shall have writ of restitution for the leased premises.

Repeal.

(5276) § **16**. All other laws in force in this Territory in conflict herewith are hereby repealed when this act takes effect.

ARTICLE 17.—GENERAL PROVISIONS.

SECTION.
1. Process of justice to any part of county.
2. Papers issued by justice must have no blanks.
3. Justice must receive moneys.
4. Another justice may hold court.
5. Security for costs from non-residents.
6. Costs to prevailing party.
7. Attorney's fees allowed.
8. Civil procedure, applicable.
9. Error in appeal not fatal.

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Process of justice to any part of county.

(5277) § **1**. Justices of the peace may issue in any action or proceedings in the courts held by them, any original, mesne or or final process to any part of the county.

Papers issued by justice must have no blanks.

(5278) § **2**. The summons, execution and every other paper made or issued by a justice, except a subpœna, must be issued without a blank left to be filled by another, otherwise it is void.

Justice must receive moneys

(5279) § **3**. Justices of the peace must receive from the sheriff or constable of their county, all moneys collected on any process or order issued from their courts respectively, and all moneys paid to them in their official capacity, and must pay the same over to the parties entitled or authorized to receive them, without delay.

Another justice may hold court.

(5280) § **4**. In case of the sickness or other disability, or necessary absence of a justice, on a return of a summons, or at the time appointed for a trial, another justice of the same township or county, may, at his request, attend in his behalf, and thereupon is vested with the power, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice before whom the summons was returnable. If the case is adjourned, the justice before whom the summons was returnable, may resume jurisdiction.

Surety for costs from non-resident.

(5281) § **5**. The justice shall in all cases where the plaintiff is a non-resident of the Territory, or foreign corporation, before filing and docketing the cause and issuing a summons, require of the plaintiff sufficient surety for costs. The surety must be a resident of the county. His obligation shall be complete by simply endorsing the summons, or signing his name on the complaint, as security for costs.

Costs to prevailing party.

(5282) § **6**. The prevailing party in civil actions in justices' courts is entitled to costs except when otherwise specifically provided by law.

Attorney's fees allowed.

(4283) § **7**. In all actions in justices' courts, the party obtaining judgment shall be entitled to attorney's fees as follows: On all judgments less than twenty-five dollars, an amount equal to twenty per cent of such judgment; on all judgments over twenty-five dollars and under fifty dollars, five dollars as attorney's fees; on all judgments over fifty dollars, an amount equal to ten per cent of such judgment as attorney's fees; in actions for the recovery of personal property, the value of the property recovered shall govern the amount of attorney's fees to be recovered in such action, and when judgment is for the defendant the amount claimed in the plaintiff's complaint shall govern the amount of attorney's fees to be recovered by the defendant: *Provided, however*, That no attorney's fees shall be allowed in any such action, unless the party has appeared therein by an attorney of a court of record.

Code of civil procedure applicable, how far.

(5284) § **8**. Justices' courts being courts of peculiar and limited jurisdiction, only those provisions of civil procedure which are in their nature applicable to the organization, powers, and course of proceedings in justices' courts, or which have been made applicable to justices' courts by special provisions in this chapter are applicable to justices' courts and the proceedings therein.

(5285) § **9.** In any case taken to the district court on writ of error or appeal, the cause shall not be dismissed by reason of an error in bringing an action to the court by the wrong method; but the district court shall treat it as an appeal or writ of error as should be done under the record. Error in appeal not fatal.

ARTICLE 18.—JUSTICES' QUARTERLY REPORT TO COUNTY BOARD.

SECTION.
1. Justices must make quarterly report to county board.
2. Contents of the reports.
3. Must pay over all money.
4. Penalty for violating.
5. Violation is a crime.

(5286) § **1.** It shall be the duty of all justices of the peace to make a full report, under oath, of all their proceedings in actions or matters in which the county or Territory is a party, or interested therein, to the county commissioners of each of their respective counties, on the first Monday of January, April, July and October of each year. Justices must make quarterly report to county board.

(5287) § **2.** Such report shall contain the names of the parties to the action or proceeding, a statement of all orders made by said justice, whether the defendant be bound over or otherwise, the judgment, whether of dismissal or imprisonment, or for a fine and costs, or either; if for imprisonment, the extent thereof and costs; if for a fine, the amount thereof and costs, the amount of fine and costs paid, if any, and the disposition thereof; an itemized account of the fees of said justices, and of all officers and witnesses, and the names of each. Contents of the report.

(5288) § **3.** Said justices shall pay into the treasury of their respective counties all fines and moneys collected by them in behalf of the county or Territory, at the time of making their reports, as provided in this act; but if at any time, such moneys in their hands amount to two hundred dollars, they shall pay the same into the treasury forthwith. Must pay over all money.

(5289) § **4.** Any justice of the peace violating any of the provisions of this act shall be liable to a fine of not less than ten nor more than one hundred dollars, to be recovered in a civil action by the county, which action may be brought originally in a justice's court or the district court. Penalty for violation.

(5290) § **5.** And if any justice of the peace shall neglect or refuse to make such report, or neglect or refuse to pay over the aforesaid moneys collected by them, or shall refuse to allow the county commissioner or any of them, to examine their records in regard to such matters, they shall be deemed guilty of wilful and corrupt misconduct in office. Violation a crime.

CHAPTER LXXII.—PROCEDURE, CRIMINAL.

[Took effect December 25, 1790.]

ARTICLE.
1. General provisions.
2. Courts having jurisdiction in criminal actions.
3. Prevention of public offenses.
4. Judicial proceedings for the removal of public officers.
5. Proceedings in criminal actions prosecuted by indictment.
6. Proceedings after commitment and before indictment.
7. Indictment.
8. Pleadings and proceedings after indictment and before commencement of trial.
9. Challenging the jury.
10. Trial.
11. Conduct of the jury after the cause is submitted to them.
12. Verdict.
13. Bill of exception.
14. New trial and arrest of judgment.
15. Judgment and execution.
16. Writs of error.
17. Compelling the attendance of witnesses.
18. Deposition in criminal actions.
19. Inquiring into the sanity of the defendant before trial or after conviction
20. Search warrants.
21. Proceedings against fugitive from justice.
22. Dismissal of action.
23. Prisons and imprisonments.
24. County jails.
25. *Habeas Corpus.*
26. Offenses committed while Nebraska laws were in force, certain civil rights.
27. Bail, reprieves, commutation and pardons.
28. Miscellaneous.

ARTICLE 1.—GENERAL PROVISIONS.

SECTION.
1. Title of code.
2. Crime defined, punishment.
3. Divisions of crimes.
4. Felony defined.
5. Misdemeanor defined.
6. Punishment only on conviction.
7. Indictment necessary except, when.
8. Rules of construction of code.
9. Code not retoactive.
10. Construction of words.
11. Writing includes printing.
12. Oath includes affirmation.
13. Signature includes, what.
14. Code applies to what.
15. Common law prevails where code is silent.
16. Criminal action defined.
17. Criminal action prosecuted, how.
18. Party defendant.
19. Rights of defendants.
20. But one prosecution.
21. Witness against self.
22. How conviction may be had.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Title of code.

(5291) § **1.** This act shall be known as the criminal procedure of the Territory of Oklahoma.

Crime defined, punishment.

(5292) § **2.** A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments:

First. Death.

Second. Imprisonment.

Third. Fine.

Fourth. Removal from office.

Fifth. Disqualification to hold and enjoy any office of honor trust or profit under this Territory.

Division of crimes.

(5293) § **3.** Crimes or public offenses are divided into

First. Felonies.

Second. Misdemeanors.

(5294) § **4.** A felony is a crime which is, or may be, punishable with death, or by imprisonment in the Territorial prison. Felony defined

(5295) § **5.** Every other crime is a misdemeanor. Misdemeanor.

(5296) § **6.** No person can be punished for a public offense except upon legal conviction in a court having jurisdiction thereof. Punishment only on conviction.

(5297) § **7.** Every public offense must be prosecuted by indictment, except: Indictment necessary except, when.

First. Where proceedings are had for the removal of civil officers of this Territory.

Second. Offenses arising in the militia, when in actual service, and in the land and naval forces in the time of war, or which the Territory may keep, with the consent of Congress in time of peace.

Third. Offenses tried in justices' and police courts in cases concerning which lawful jurisdiction, without the intervention of a grand jury, is or may be conferred upon said courts.

Fourth. Offenses, not infamous crimes, all of which may be tried on information, before the county or probate court, and if not there tried then before the district court.

(5298) § **8.** The rule of common law that penal statutes are to be strictly construed, has no application to this chapter. This chapter establishes the law of this Territory respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to promote its objects, and in furtherance of justice. Rule o construction of chapter.

(5299) § **9.** No part of this chapter is retroactive unless expressly so declared. Chapter not retroactive.

(5300) § **10.** Unless when otherwise provided, words used in this code in the present tense include the future as well as the present. Words used in the masculine comprehend as well the feminine and neuter. The singular number includes the plural, and the plural the singular. And the word person includes a corporation as well as a natural person. Construction of words.

(5301) § **11.** The term writing includes printing. Writing includes printing.

(5302) § **12.** The term oath includes an affirmation. Oath includes affirmation.

(5303) § **13.** The term signature includes a mark when the person cannot write, his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient. What signature includes.

(5304) § **14.** This chapter applies to criminal actions and to all other proceedings in criminal cases which are herein provided for. To what this chapter applies.

(5305) § **15.** The procedure, practice and pleadings in the district courts of this Territory, in criminal actions or in matters of criminal nature. not specifically provided for in this chapter, shall be in accordance with the procedure, practice and pleadings of the common law, and assimilated as near as may be with the procedure, practice and pleadings of the United States or federal side of said courts. Common law prevails when chapter is silent.

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Criminal action defined.

(5306) § **16.** The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

Criminal action, how prosecuted.

(5307) § **17.** A criminal action is prosecuted in the name of the Territory of Oklahoma as a party, against the person charged with the offense.

Party defendant.

(5308) § **18.** The party prosecuted in a criminal action is designated in this chapter as the defendant.

Rights of defendant.

(5309) § **19.** In a criminal action the defendant is entitled:

First. To a speedy and public trial.

Second. To be allowed counsel, as in civil actions, or to appear and defend in person and with counsel; and,

Third. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court.

But one prosecution.

(5310) § **20.** No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted, except as hereinafter provided for new trials.

Witness against self.

(5311) § **21.** No person can be compelled in a criminal action to be witness against himself; nor can a person charged with a public offense be subjected before conviction to any more restraint than if necessary for his detention to answer the charge.

How conviction may be had,

(5312) § **22.** No person can be convicted of a public offense, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon final judgment for or against him upon a demurrer to the indictment, or upon a judgment of a police or justice's court in cases in which such judgment may be lawfully given without the intervention of a jury or grand jury.

ARTICLE 2.—COURTS HAVING JURISDICTION IN CRIMINAL ACTIONS.

SECTION.
1. The district court.
2. District court, where held.
3 Jurisdiction of district court.
4. Final decisions reviewed, how.
5. Jurisdiction of justice of the peace.

The district court.

(5313) § **1.** There is in each of the three districts of this Territory a court denominated the district court, with jurisdiction conferred by the Organic Act of this Territory and other laws of Congress, and having, among other things, common law jurisdiction, and authority for the redress of all wrongs committed against the laws of this Territory, affecting persons or property.

District court where held.

(5314) § **2.** Each of the said district courts may be held, for the trial of criminal actions, in any county or subdivision in the same district, as is, or may be, provided by law.

Jurisdiction of district court.

(5315) § **3.** The district court has jurisdiction:

First. To inquire, by the intervention of a grand jury, of all public offenses committed or triable in the county or subdivision for which the court may be held.

Second. To inquire into the cause of detention of all persons

imprisoned in the jail of the county or subdivision, or otherwise detained, and to make an order for their recommitment or discharge, or otherwise according to law.

Third. To hear, try and determine all criminal actions according to law, and to exercise all powers whether original or appelate, conferred upon it by this chapter, or by the other laws of this Territory.

Final decisions reviewed, how.

(5316) § **4**. The final decisions of the district courts are reviewable and determinable by the Supreme Court, according to law, on writs of error allowable by the Supreme Court, and bringing up for review the record and bills of exceptions.

Jurisdiction of justice of the peace.

(5317) § **5**. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows:

First. As committing magistrates, under the provisions of this chapter as provided in the chapter in relation to criminal procedure before justice's procedure; and,

Second. To exercise such lawful jurisdiction, to try and determine petit misdemeanors, not indictable, as by the Organic law and said justice's procedure, or other laws, is now, or may hereafter be conferred upon them.

ARTICLE 3.—PREVENTION OF PUBLIC OFFENSES.

Lawful Resistance.

SECTION.
1. Lawful resistance to commission of offenses.
2. By party to be injured.
3. By other persons, resistance.

Intervention of the Officers of Justice.

SECTION.
4. Public offenses prevented.
5. Persons assisting officers

Security to Keep the Peace.

SECTION.
6. Information laid before whom.
7. Magistrate must issue warrant.
8. Proceedings when charge is controverted.
9. Persons to be discharged, when.
10. When person must give bond.
11. When bond is not given.
12. Person discharged on giving bond.
13. Undertaking sent to district court.
14. Assault in presence of magistrate.
15. Person must appear in district court.
16. A complainant does not appear.
17. Proceedings when parties appear.
18. When undertaking to keep the peace is broken.
19. Undertaking prosecuted.
20. What alleged in the action.
21. Limitation.
22. Costs, how taxed.

Police in Cities and Villages.

SECTION.
23. Organization of police.
24. Force to attend public meetings.

Suppression of Riots.

SECTION.
25. Officers may command assistance.
26. Names of resisters to be reported.
27. Refusal to assist officer, a misdemeanor.
28. Governor to order additional force.
29. Governor may call on the military.
30. Unlawful assemblage.
31. Proceedings if assembly does not disperse.
32. Who are deemed riotors.
33. Officer guilty of misdemeanor.
34. Officers may disperse assembly.
35. Precautions before endangering life.
36. Penalty for resisting officers in dispersing riot.

Lawful resistance to commission of offense.

(5318) § **1**. Lawful resistance to the commission of a public offense may be made:

First. By the party about to be injured.

Second. By other parties.

By party to be injured.

(5319) § **2**. Resistance sufficient to prevent the offense may be made by the party about to be injured:

First. To prevent an offense against his person or his family, or some member thereof.

Second. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

Resistance by other person.

(5320) § **3**. Any other person, in aid or defense of the person about to be injured, may make resistence sufficient to prevent the offense.

Public offenses prevented.

(5321) § **4.** Public offenses may be prevented by the intervention of the officers of justice:

First. By requiring security to keep the peace.

Second. By forming a police in cities and villages, and by requiring their attendance in exposed places.

Third. By suppressing riots.

Persons assisting officers.

(5322) § **5.** When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

Information laid before whom

(5323) § **6.** An information, verified by the oath of the complainant, may be laid before any magistrate, that a person has threatened to commit an offense against the person or property of another.

Magistrate must issue warrant

(5324) § **7.** If it appear from the information that there is just reason to fear the commission of the offenses threatened, by the person complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, or marshal, or policeman of the city or town, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate of the county.

Proceedings when charge is controverted.

(5325) § **8.** When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must, on demand of the defendant, be reduced to writing, and subscribed by the witnesses.

When person to be discharged.

(5326) § **9.** Unless it appear that there is just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

When person must give bond.

(5327) § **10.** If, however, there be just reason to fear the commission of the offense the person complained of may be required to enter into an undertaking in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next district court of the county, and in the meantime to keep the peace toward the people of this Territory, and particularly toward the complainant.

When bond is or is not given.

(5328) § **11.** If the undertaking required by the last section be given the party complained of must be discharged. If he do not give it the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

Person may be discharged on giving bond.

(5329) § **12.** If the person complained of be committed for not giving security he may be discharged by any justice of the peace of the county, or police or special justice of the city, upon giving the same.

Undertaking sent to district court.

(5330) § **13.** The undertaking must be transmitted by the magistrate to the next district court of the county.

Assault in presence of magistrate

(5331) § **14.** A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or mag-

istrate to give security, as provided in section 5327 or if he refuses to do so, he may be committed as provided in section 5328.

Person must appear in district court.

(5332) § **15**. A person who has entered into an undertaking to keep the peace must appear on the first day of the next term of the district court of the county. If he do not, the court may forfeit his undertaking, and order it to be prosecuted unless his default be excused.

If complainant does not appear person to be discharged.

(5333) § **16**. If the complainant do not appear, the person complained of may be discharged, unless good cause to the contrary be shown.

Proceedings when parties appear.

(5334) § **17**. If both parties appear, the court may hear their proofs and allegations, and may either discharge the understanding, or require a new one for a time not exceeding one year.

When an undertaking to keep the peace is broken.

(5335) § **18**. An undertaking to keep the peace is broken on the failure of a person complained of to appear at the district court as provided in section 5332, or upon his being convicted of a breach of the peace.

Undertaking prosecuted

(5336) § **19**. Upon the district attorney producing evidence of such conviction to the district court to which the undertaking is returned, that court must order the undertaking to be prosecuted, and the district attorney must thereupon commence an action upon it in the name of this Territory.

What alleged in the action.

(5337) § **20**. In the action the offense stated in the record of conviction must be alleged as the breach of the undertaking, and such record is conclusive evidence thereof.

Limitation.

(5338) § **21**. Security to keep the peace or to be of good behavior cannot be required, except as prescribed in this article.

Court to tax costs in cases of security to keep the peace.

(5339) § **22**. In all cases of security to keep the peace under this chapter, the court in addition to the orders mentioned in said chapter shall tax the costs against the complainant or defendant, or both, as justice may require, and enter judgment therefor, which may be enforced as judgments for costs in criminal cases, and execution may issue therefor.

Organization of police

(5340) § **23**. The organization and regulation of the police in the cities and villages of this Terrltory are governed by special statutes.

Force of police to attend public meetings

(5341) § **24**. The mayor or other officer having the direction of the police in a city or village, must order a force sufficient to preserve the peace to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

Officer may command assistance.

(5342) § **25**. When a sheriff or other public officer authorized to execute process, finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper, and may in manner and form as provided by law, and not otherwise, call any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

Officer must report names of resisters.

(5343) § **26**. The officer must certify to the court from which

the process is issued, the names of the resisters and their aiders and abettors, to the end that they may be proceeded against for contempt.

Refusal to assist officer a misdemeanor.

(5344) § **27**. Every person commanded by a public officer to assist him in the execution of a process, as provided in section 5342, who, without lawful cause, refuses or neglects to obey the commands, is guilty of a misdemeanor.

Governor must order an additional force when necessary.

(5345) § **28**. If it appears to the governor that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, or to suppress riots and to preserve the peace, he must, on the application of the sheriff, or the judge, order such a force from any other county or counties as is necessary, and all persons so ordered or summoned by the governor or acting governor, are required to attend and act; and any such persons who, without lawful cause, refuse or neglect to obey the command, are guilty of a misdemeanor.

Governor may call on the military.

(5346) § **29**. Under the facts and circumstances mentioned in the last section, and when the civil power of the county is not deemed sufficient, in shall be the duty of the governor to apply to the military authorities of the United States for a force sufficient to execute the laws and to prevent resistance thereto, to suppress riots, execute process and preserve the peace.

Unlawful assemblage.

(5347) § **30**. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county, or any sheriff of the sub-division, and his deputies, the officials governing the city or town, or the justices of the peace and marshals and constables and police thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them in the name of the Territory, immediately to disperse.

Proceedings if assembly does not disperse.

(5348) § **31**. If the persons assembled do not immediately disperse the magistrates and officers must arrest them or cause them to be arrested, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

Who are deemed rioters.

(5349) § **32**. If a person so commanded to aid the magistrates or officers neglect to do so he is deemed one of the rioters and is punishable accordingly.

Officer guilty of a misdemeanor.

(5350) § **33**. If a magistrate or officer having notice of an unlawful or riotous assembly mentioned in section 5347, neglect to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for surpressing the same and arresting the offenders, he is guilty of a misdemeanor.

Officer may disperse assembly.

(5351) § **34**. If the persons assembled and commanded to disperse do not immediately disperse, any two of the magistrates or officers mentioned in section 5347, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary, to disperse the assembly and arrest the offenders.

Precautions before endangering life.

(5352) § **35**. Every endeavor must be used, both by the magistrate and civil officers, and by the officer commanding the

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troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse before an attack is made upon them by which their lives may be endangered.

Penalty for resisting officers in dispersing riot.

(5353) § **36**. A person who, after the publication of a proclamation by the Governor or acting Governor, or who, after lawful notice as aforesaid to disperse and retire, resists or aids in resisting the execution of process in a county declared to be in a state of riot or insurrection, or who aids or attempts to resue or escape of another from lawful custody to confinement, or who resists or aids in resisting a force ordered out by the Governor or any civil officer as aforesaid, to quell or suppress an insurrection or riot, is guilty of a felony, and is punishable by imprisonment in the Territorial prison for not less than two years.

ARTICLE 4.—JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS.

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1. Proceedings for the removal of civil officers.
2. Accusation, how presented.
3. Requisites of accusation.
4. Duty of judge and attorney.
5. Defendant to appear, when.
6. Defendant's answer.
7. Objection made, how.
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SECTION.

9. Answer.
10. Judgment on trial.
11. Method of trial.
12. Judgment if convicted.
13. Removal of Territorial officers.
14. Presentment by grand jury.
15. Removal of district attorney.
16. Other proceedings and penalties.

Proceedings for the removal of civil officers.

(5354) § **1**. In addition to the proceedings mentioned in civil procedure in relation to vacancies in office and supplying the same, and apart and distinct from any other criminal action or proceedings, the following provisions are adopted to obtain a judgment of removal from office.

Accusation, how presented.

(5355) § **2**. An accusation in writing against any county, township, city or municipal officer, for wilful or corrupt misconduct in office, may be presented by the grand jury to the district court of the county in or for which the officer accused is elected or appointed.

Requisites of accusation.

(5356) § **3**. The accusation must state the offense charged, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Duty of judge and attorney.

(5357) § **4**. After receiving the accusation, the judge to whom it is delivered must forthwith cause it to be transmitted to the district attorney of the county or subdivision, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and required by written notice of not less than five days that he appear before the district court of the county or subdivision, and answer the accusation at a specified time. The original accusation must then be filed with the clerk of the court.

Defendant to appear, when.

(5358) § **5**. The defendant must appear at the time appointed in the notice, and answer the accusation, unless, for sufficien

cause, the court assigns another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

Defendant answer.

(5359) § **6**. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

Objection made, how.

(5360) § **7**. If he object to the legal sufficiency of the accusation the objection must be in writing but need not be in any specific form, it being sufficient if it present intelligibly the ground of the objection.

Denial of accusation.

(5361) § **8**. If he deny the truth of the accusation the denial may be oral and without oath and must be entered upon the minutes.

Answer.

(5362) § **9**. If an objection to the sufficiency of the accusation be not sustained the defendant must answer the accusation forthwith

Judgment on trial

(5363) § **10**. If the defendant plead guilty, or refuse to answer the accusation the court must render judgment of conviction against him. If he deny the matters charged, the court must proceed to try the accusation.

Method of trial.

(5364) § **11**. The trial must be by jury and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

Judgment if convicted.

(5365) § **12**. Upon a conviction, the court must pronounce judgment, that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of removal.

Removal of territorial officers.

(5366) § **13**. The same proceedings may be had, on like grounds, for the removal of any Territorial officer elected by the people of the Territory, or appointed by the Governor thereof, except delegate to Congress and members of the Legislative Assembly.

Presentment by grand jury.

(5367) § **14**. In such proceedings the accusation may be presented by the grand jury of the county or subdivision in which such Territorial officer resides, or in which he has his place of office for the usual transaction of his official business.

Removal of district attorney,

(5368) § **15**. The same proceedings may be had, on like grounds for the removal of a district attorney, except that the accusation must be delivered by the judge to the clerk, and by him to such person as may be appointed by the judge to act as prosecuting officer in the matter, who is authorized and required to conduct the proceedings.

Other proceedings and penalties.

(5369) § **16**. The same proceedings may be had against any officer within the jurisdiction of the court who is accused of charging and collecting illegal fees for services rendered or to be rendered in his office, or who has refused or neglected so perform the official duties pertaining to his office, or who has rendered himself incompetent to perform his said duties by reason of habitual drunkenness; and, upon conviction thereof, the court may pronounce judgment that the defendant be removed from office, or that he pay a fine not exceeding five hundred dollars in favor of the informer, with costs of suit; or the court may, in its discretion, pronounce judgment, both for his removal from office and for the payment or the fine and costs.

ARTICLE 5.—PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT, TO THE COMMITMENT INCLUSIVE.

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8. Jurisdiction of bigamy or incest.
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10. Jurisdiction in cases of accessory.
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SECTION.
63. Duty of magistrate.
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66. Adjournment.
67. Disposition of defendant on adjournment.
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69. Duty of magistrate on examination.
70. Rights of defendant.
71 Order of witnesses.
72. Magistrate to keep depositions.
73. Violation of provisions of last section.
74 Defendant discharged, when.
75 Costs taxed against complainant
76. Defendant held to answer.
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78. When offense is bailable.
79. If bail is not taken.
80. Commitment.
81. Form of commitment.
82. Witnesses to give undertaking.
83. Sureties way be required.
84. Infants and married women.
85. Witness committed.
86. Subsequent security may be demanded.
87. Witness may be confined.
88. Magistrate must return papers and record.

(5370) § **1**. Every person is liable to punishment for a public offense, as prescribed by section 1862, except as it is by law cognizable exclusively in the courts of the United States. Who is punishable

(5371) § **2**. When the commission of a public offense, commenced without this Territory, is consummated within its boundaries, the defendant is liable to punishment therefor in this Territory, though he were out of the Territory at the time of the commission of the offense charged, if he consummated it in this Territory through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and, in such case, the jurisdiction is in the county in which the offense is consummated. Offenses consummated within the territory.

(5372) § **3**. When an inhabitant or resident of this Territory, by previous appointment or engagement, fights a duel, or is concerned as second therein, out of the jurisdiction of this Territory, and in the duel a wound is inflicted upon a person, whereof he dies in this Territory, the jurisdiction of the offense is in the county where the death happened. Jurisdiction in case of duel.

(5373) § **4**. When an inhabitant of this Territory shall have left the same for the purpose of evading the operation of the provisions of the statutes relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed, or in any county in which, in the opinion of the Governor, the evidence can be most conviently obtained and produced, to be designated by him by written appointment, filed in the office of the clerk of the court of that county. When person leaves the territory to evade the law.

(5374) § **5**. When a public offense is committed, partly in one county and partly in another county, or the acts or effects thereof, constituting or requsite to the offense, occur in two or more counties, the jurisdiction is in either county. Offense committed in two counties.

(5375) § **6**. When a public offense is committed on the boundry of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county. Offense committed near boundary of county.

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Jurisdiction in certain cases.

(5376) § **7**. The jurisdiction of an indictment:

First. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him, with intent, against his will, to cause him to be secretely confined or imprisoned in this Territory, or to be sent out of the Territory, or from one county to another; or,

Second. For decoying, or taking or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parents, guardian, or other person having lawful charge of the child; or,

Third. For the inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-one years for the purpose of prostitution; or,

Fourth. For taking away any female under the age of sixteen years from her father, mother, guardian or other person having the legal charge of her person without their consent either for the purpose of concubinage or prostitution,

Is in any county in which the offence is committed or into or out of which the person upon whom the offense was committed, may, in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, aiding or in being an accessory to the commission of the offense, or in abetting the parties concerned therein.

Jurisdiction for bigamy or incest.

(5377) § **8**. When the offense either of bigamy or incest is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

Proceedings when property stolen and brought into another county

(5378) § **9**. When property taken in one county, by burglary, robbery, larceny or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if, before the conviction of the defendant in the latter, he be indicted in the former county, the sheriff of the latter must, upon demand, deliver him to the sheriff of the former county, upon being served with a certified copy of the indictment, and upon a receipt indorsed thereon by the sheriff of the former county, of the delivery of the body of the defendant, and is, on filing the copy of the indictment and the receipt, exonerated from all liability in respect to the custody of the defendant.

Jurisdiction in case of accessory.

(5379) § **10**. In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

Conviction or acquittal a bar.

(5380) § **11**. When an act charged as a public offense is within the jurisdiction of another territory, county or state, as well as this Territory, a conviction or acquittal thereof in the former is a bar to a prosecution or indictment therefor in this Territory.

When jurisdiction is in more than one county.

(5381) § **12**. When an offense is in the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another.

Indictment for an escape.

(5382) § **13**. The jurisdiction of an indictment for escaping from prison is in any county of the Territory.

Stolen property.

(5383) § **14**. The jurisdiction of an indictment for stealing in

any state or country, or other territory, the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this Territory, is in any county into or through which such stolen property has been brought.

For murder or manslaughter.

(5384) § **15**. The jurisdiction of an indictment for murder or manslaughter, when the injury which caused the death was inflicted in one county, and the party injured dies in another county, or out of the Territory, is in the county where the injury was inflicted.

When principal was not present.

(5385) § **16**. The jurisdiction of an indictment against a principle in the commission of a public offense, when such principal is not present at the commission of the public offense, is in the same county it would be under this chapter if he were so present and aiding and abetting therein.

No limit as to time of action for murder.

(5386) § **17**. There is no limitation of the time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Limit for other crimes.

(5387) § **18**. In all other cases an indictment for a public offense must be found within three years after its commission.

Absence of the defendant.

(5388) § **19**. If when the offense is committed the defendant be out of the Territory, the indictment may be found within the term herein limited after his coming within the Territory, and no time during which the defendant is not an inhabitant of or usually resident within the Territory, is part of the limitation.

When indictment is found.

(5389) § **20**. An indictment is found within the meaning of the last three sections, when it is duly presented by the grand jury in open court, and there received and filed.

Information defined

(5390) § **21**. The information is the allegation in writing, made to a magistrate, that a person has been guilty of some designated public offense and is amenable.

Magistrate defined.

(5391) § **22**. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

Who are magistrates

(5392) § **23**. The following persons are magistrates:

First. The judges of the Supreme Court.

Second. The district judges.

Third. Justices of the peace.

Fourth. Police and other special justices appointed or elected in a city, village or town.

Magistrate to issue warrant.

(5393) § **24**. When an information, verified by oath or affirmation, is laid before a magistrate, of the commission of a public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, issue a warrant of arrest.

Form of warrant.

(5394) § **25**. A warrant of arrest is an order in writing, in the name of the Territory, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

TERRITORY OF OKLAHOMA } SS
COUNTY OF ....., }

To any sheriff, constable, marshal or policeman in this Territory (or in the county of ....., as the case may be):

Information upon oath having been this day laid before me that the crime of (designating it) has been committed, and accusing C D thereof; You are therefore commanded forthwith to arrest the above named C D, and bring him before me at (naming the place,) or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at.....this.....day of.....18....

E. F., Justice of the Peace (or as the case may be.)

Requisites of warrant.

(5395) § **26.** The warrant must specify the name of the defendant, or, if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the magistrate has authority to issue the warrant, and the time of issuing it, and the county, city, town or village where it is issued, and be signed by the magistrate with his name of office.

Warrant directed to whom

(5396) § **27.** The warrant must be directed to and executed by a peace officer.

Peace officer.

(5397) § **28.** A peace officer is a sheriff of a county or subdivision, or constable, marshal or policeman of a city, town or village or township.

Warrants, by whom served

(5398) § **29.** All warrants, except those issued for violation of city ordinances, may be served in any county in the Territory; and may be served by [any] peace officer [to whom] it may be directed or delivered.

When warrant charges a felony.

(5399) § **30.** If the offense charged in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrants or some other magistrate in the county as provided in section 5400.

When offense charged is a misdemeanor

(5400) § **31.** If the offense charged in the warrant be a misdemeanor and the defendant be arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail and take bail from him accordingly.

Proceedings when bail is taken.

(5401) § **32.** On taking bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

When bail is not given

(5402) § **33.** If, on the admission of the defendent to bail, as provided in section 5400, bail be not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county, as provided in the next section.

When magistrate is absent.

(5403) § **34.** When, by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable

to act, be taken before the nearest or most accessible magistrate in the same county, The officer must, at the same time, deliver to the magistrate the warrant, with the return indorsed and subscribed by him.

Must be no delay.

(5404) § **35**. The defendant must, in all cases, be taken before the magistrate without unnecessary delay.

When taken before magistrate who did not issue warrant.

(5405) § **36**. If the defendant be taken before a magistrate other than the one who issued the warrant, the information on which the warrant was granted must be sent to that magistrate, or if it cannot be procured, the prosecutor and his witness must be summoned to give their testimony anew.

When offense is triable in another county.

(5406) § **37**. When an information is laid before a magistrate of the commission of a public offense triable in another county of the Territory, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest and most accessible magistrate of the county in which the offense is triable, and the information of the informant, with the depositions, if any, of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

Duty of officers.

(5407) § **38**. The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

Duty when offense is a misdemeanor.

(5408) § **39**. If the offense charged in the warrant issued, pursuant to section 5403, is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, information, depositions, if any, and undertaking, to the clerk of the court in which the defendant is required to appear.

Arrest defined.

(5409) § **40**. Arrest is the taking of a person into custody, that he may be held to answer for a public offence.

Arrest made by whom

(5410) § **41**. An arrest may be either:

First. By a peace office, under warrant.

Second. By a peace officer, without a warrant; or,

Third. By a private person.

Aid of officer

(5411) § **42**. Every person must aid an officer in the execution of a warrant, if the officer require his aid.

Arrest when made.

(5412) § **43**. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate indorsed upon the warrant.

Arrest how made.

(5413) § **44**. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Restraint.

(5414) § **45**. The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

Officer must show warrant.

(5415) § **46**. The officer must inform the defendant that he

acts under the authority of the warrant, and must also show the warrant if required.

When defendant resists

(5416) § **47**. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Officer may break open door.

(5417) § **48**. The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Same to liberate person detained.

(5418) § **49**. An officer may break open an outer or inner door or window of a dwelling house for the purposes of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

Arrest without warrant.

(5419) § **50**. A peace officer may, without a warrant, arrest a person:

First. For a public offense, committed or attempted in his presence.

Second. When the person arrested has committed a felony, although not in his presence.

Third. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

Fourth. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.

May break door, when

(5420) § **51**. To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he be refused admittance.

Arrest without warrant at night

(5421) § **52**. He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest though it afterward appear that the felony had not been committed.

Authority must be stated

(5422) § **53**. When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a public offense, or is pursued immediately after an escape.

Arrest by bystander.

(5423) § **54**. He may take before a magistrate, a person, who being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

Offense committed in presence of magistrate.

(5424) § **55**. When a public offense is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Arrest by private person.

(5425) § **56**. A private person may arrest another:

First. For a public offense committed or attempted in his presence.

Second. When the person arrested has committed a felony although not in his presence.

Third. When a felony has been in fact committed, and he has

reasonable cause for believing the person arrested to have committed it.

Inform person of cause of arrest.

(5426) § **57**. He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offense or when he is arrested on pursuit immediately after its commission.

Private person may break door.

(5427) § **58**. If the person to be arrested have committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling house, for the purpose of making the arrest.

Duty in case of arrest by private person

(5428) § **59**. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

Offensive weapons taken away.

(5429) § **60**. Any person making an arrest must take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

Pursuit and arrest of an escape.

(5330) § **61**. If a person arrested escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the Territory.

May break door or window to make arrest.

(5431) § **62**. To take the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a dwelling house.

Duty of magistrate.

(5432) § **63**. When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and also of his right to waive an examination before any further proceedings are had.

Defendant allowed counsel.

(5433) § **64**. He must also allow to the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel in the county or city as the defendant may name. The officer must, without delay, perform that duty, and shall receive fees therefor as upon service of a subpœna: *Provided, however*, That at any time before the examination is begun, a change of venue may be had, for the same causes and in the same manner, and be transmitted to another justice, as in cases finally triable before a justice of the peace.

Defendant to be examined.

(5434) § **65.** The magistrate must without a jury, immediately after the appearance of counsel, or if none appear and the defendant require the aid of counsel, after waiting a reasonable time therefor, proceed to examine the case. The defendant may be sworn and testify in his own behalf as in civil cases.

Adjournment.

(5435) § **66**. The examination must be completed at one session unless the magistrate for goood cause adjourn it. The adjournment cannot be for more than two days at each time, nor

more than six days in all, unless by consent or on motion of the defendant.

Disposition of defendant on adjournment

(5436) § **67**. If an adjournment be had for any cause, the magistrate must commit the defendant for examination, or discharge him from custody upon sufficient bail, or upon the deposit of money as provided in this chapter, as security for his appearence at the time to which the examination is adjourned.

Commitment for examination.

(5437) § **68**. The commitment for examination is by an indorsement signed by the magistrate, on the warrant of arrest, to the following effect.

The within named A B, having been brought before me under this warrant, and having failed to give bail for his appearance, is committed to the sheriff of the county of ....(or to the marshal of the city of..... ....., as the case may be), to await examination on the..... day of.... ... .18...., at .....o'clock, at which time you will have his body before me at my office.

Duty of magistrate on examination.

(5438) § **69**. At the examination the magistrate must, in the first place, read to the defendant the information on file before him. He must also, after the commencement of the prosecution, issue subpœnas for any witnesses required by the prosecutor or the defendant.

Rights of the defendant.

(5439) § **70**. The witnesses must be examined in the presence of the defendant, and may be cross examined in his behalf. And on demand of the defendant all the testimony in the case must be reduced to writing in the form of depositions.

Order of witnesses

(5440) § **71**. When the examination of the witnesses on the part of the Territory is closed, any witnesses the defendant may produce must be sworn and examined.

Magistrate to keep depositions.

(5441) § **72**. The magistrate or his clerk must keep the depositions taken on the examination, if any have been taken, and the statement of the defendant, if any, until they are returned to the proper court, and must not permit them to be inspected by any person except a judge of a court having jurisdiction of the offense, the district attorney of the county, and the defendant and his counsel.

Violation of provisions of last section.

(5442) § **73**. A violation of the provisions of the last section is punishable as a misdemeanor.

Defendant discharged, when.

(5443) § **74**. After hearing the proofs and the statement of the defendant, if he have made one, or his testimony if he testifies if it appear either that a public offense has not been committed, or that a public offense has been committed, but there is not sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an indorsement on the information over his signature to the following effect:

There being no sufficient cause to believe the within named A B. guilty of the offense within mentioned, I order him to be discharged.

Costs taxed against complainant.

(5444) § **75**. If the defendant on a preliminary examination for a public offense be discharged as provided in the last section and if the magistrate find that the prosecution was malicious and without probable cause, he shall enter such judgment on his docket and tax the costs against the complaining witness which shall be enforced as judgments for costs in criminal cases, and execution may issue therefor.

Defendant held to answer.

(5445) § **76**. If, however, it appear from the examination that

any public offense triable on indictment has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must in like manner indorse on the information an order signed by him to the following effect:

It appearing to me that the offense in the within [named] information mentioned (or any other offense, according to the fact, stating generally the nature thereof,) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereoof, I order that he be held to answer the same.

Proceedings when offense is not bailable.

(5446) § **77**. If the offense be not bailable, the following words, or words to the same effeet, must be added to the indorsement:

And that he is hereby committed to the sheriff of....., or to the marshal of the city of....., or as the case may be.)

When offense is bailable.

(5447) § **78**. If the offense is bailable, and bail is taken by the magistrate, the following words, or words to the same effect, must be added to the indorsement mentioned in the second preceding section:

And I have admitted him to bail, to answer, by the undertaking hereto annexed.

If bail is not taken.

(5448) § **79**. If the offense is bailable, and the defendant is admitted to bail, but the bail have not been taken, the following words, or words to the same effect, must be added to such indorsement:

And that he is admitted to bail in the sum of..... ..dollars, and be committed to the sheriff of the county of..... (or marshal of the city of....., or as the case may be,) until said bail be given.

Commitment.

(5449) § **80**. If the magistrate order the defendant to be committed as provided in the three preceding sections, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to the peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

Form of commitment.

(5450) § **81**. The commitment must be to the following effect:

THE TERRITORY OF OKLAHOMA }
COUNTY OF ....., } SS

To the sheriff of the county of ....., (or the marshal of the city of ....., or as the case may be):

An order having been this day made by me, that A B be held to answer upon a charge of (stating briefly the nature of the offense, with time and place as near as may be), you are commanded to receive him into your custody, and detain him until he is legally discharged.

Dated at ....., this..... day of ....., 18....

C..... D.....

Justice of the peace (or as the case may be).

Witness to give undertaking.

(5451) § **82**. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the Territory, a written undertaking, without surety, to the effect that he will appear and testify at the court to which the information and deposition, if any, are to be sent, or

that he will forfeit such sum as the magistrate may fix and determine.

Sureties may be required.

(5452) § **83.** When the magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify, unless security be required, he may order the witness to enter into a written undertaking, with such sureties and in such sum as he may deem proper, for his appearance, as specified in the last section.

Infants and married women.

(5453) § **84.** Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

Witness committed.

(5454) § **85.** If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to prison until he comply, or is legally discharged.

Subsequent security may be demanded.

(5455) § **86.** When, however, any material witness on the part of the people has been discharged on his undertaking, without surety, if afterwards, on the sworn application of the district attorney or other person on behalf of the Territory, made to the magistrate or to any judge, it satisfactorily appears that the presence of such witness or any other person on the part of the people is material or necessary on the trial in court, such magistrate or judge may compel such witness, or any other material witness on the part of the Territory, to give an undertaking with sureties, to appear on the said trial and give his testimony therein; and, for that purpose, the said magistrate or judge may issue a warrant against such person, under his hand, with or without seal, directed to a sheriff, marshal or other officer, to arrest such person and bring him before such magistrate or judge.

Witness may be confined.

(5456) § **87.** And in case the person so arrested shall neglect or refuse to give said undertaking in the manner required by said magistrate or judge, he may issue a warrant of commitment against such person, which shall be delivered to said sheriff or other officer, whose duty it shall be to convey such person to the jail mentioned in said warrant, and the said person shall remain in confinement until he shall be removed to the grand jury and to the court, for the purpose of giving his testimony, or until he shall have given the undertaking required by said magistrate or judge.

Magistrate must return papers and record.

(5457) § **88** When a magistrate has discharged a defendant, or has held him to answer, he must return immediately to the next district court of the county or subdivision, the warrant, if any, the information, the depositions, if any have been taken, of all the witnesses examined before him, the statement of the defandant, if he have made one, and all undertakings of bail or for the appearance of witnesses, taken by him, together with a certified record of the proceedings as they appear on his docket.

ARTICLE 6.—PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT. Chap. 72.

Preliminary Provisions.

SECTION.
1. Public offenses presented, how.
2. Removal from office.

Formation of the Grand Jury.

SECTION.
3 Grand jury composed of what.
4. Completing grand jury.
5. Twelve jurors may find indictment.
6 Challenge to the panel, who may make.
7. Same, cause for.
8. Jury discharged.
9 Challenge to juror.
10. Oral or written challenge.
11. Duty of clerk of court.
12. Effect of challenge allowed.
13. Violation of last section.
14. Challenge made before jury is sworn.
15. Court may order another jury.
16. Special grand jury.
17. Court to appoint foreman.
18. Oath to foreman.
19. Oath of other jurors.
20. Grand jury charged.
21. Jury retires.
22. Grand jury must appoint a clerk,
23. Jury discharged.

Powers and Duties of the Grand Jury.

SECTION.
24. General powers and duties of grand jury.
25. Indictment defined.
26. Oath to witness.
27. What evidence received.
28. Only best evidence.
29. Evidence for defendant.
30. Indictment to be found, when.
31. Member to give evidence.
32. Subjects for inquiry by grand jury.
33. Has access to prisons.
34. District attorney privileged.
35. Proceedings kept secret.
36. When juror may disclose proceedings.
37. Jurors cannot be questioned.

(5458) § **1**. All public offenses triable in the district courts must be prosecuted by indictment, except as provided in the next section. Public offenses prosecuted how.

(5459) § **2**. When the proceedings are had for the removal of county, township, city, municipal or Territorial officers they may be commenced by an accusation in writing as provided in article 4 of this chapter. Removal from office.

(5460) § **3**. A grand jury is a body of men consisting of not less than twelve nor more than sixteen jurors impanelled and sworn to inquire into and true presentment make of all public offenses against the Territory committed or triable within the county or sub-division for which the court is holden. Grand jury composed of what.

(5461) § **4**. Whenever challenges to individual grand jurors is allowed, the court shall make an order to the sheriff, deputy sheriff, or coroner to summon without delay from the body of the county or sub-division a sufficient number of persons to complete or to form a grand jury. Completing grand jury.

(5462) § **5**. No indictment shall be found nor shall any accusation be made without the concurrence of at least twelve grand jurors. Twelve jurors may find indictment.

(5463) § **6**. The Territory, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual grand juror. Who may challenge a panel

Same, cause for.

(5464) § **7**. A challenge to the panel may be interposed by either party for one or more of the following causes only.

First. That the requisite number of ballots was not drawn from the jury box of the county or subdivision.

Second. That the drawing was not had in the presence of the officers designated by law, or in the manner prescribed by law.

Jury discharged.

(5465) § **8**. If a challenge to the panel be allowed, the grand jury must be discharged.

Challenge to juror.

(5466) § **9**. A challenge to an individual grand juror may be interposed by either party, for one or more of the following causes only.

First. That he is a minor.

Second. That he is not a qualified elector.

Third. That he is otherwise disqualified under any of the provisions of law, in relation to the qualification of grand jurors.

Fourth. That he is insane.

Fifth. That he is a prosecutor upon a charge against the defendant.

Sixth. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.

Seventh. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror, by reason of having formed and expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the court, upon his declaration, under oath, or otherwise, that he can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him.

Oral or written challenge.

(5467) § **10**. Challenges may be oral or in writing, and must be tried by the court.

Duty of clerk of court.

(5468) § **11**. The court must allow or disallow the challenge and the clerk must enter its decision upon the minutes if demanded.

Effect of challenge allowed.

(5469) § **12**. If a challenge to an individual grand juror is allowed, he cannot be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon.

Violation of last section

(5470) § **13**. The grand jury must inform the court of a violation of the last section, and it is punishable by the court as a contempt.

Challenge to be before jury is sworn.

(5471) § **14**. Neither the Territory, nor a person held to answer a charge for a public offense, can take advantage of any objection to the panel or to an individual grand juror unless it be by challenge, and before the grand jury is sworn, except that after the grand jury is sworn, and before the indictment is found, the court may, in its discretion, upon a good cause shown, receive and allow a challenge.

Court may order another jury.

(5472) § **15**. If the grand jury is discharged by an allowance

of a challenge to the whole panel, or if an offense is committed during the sitting of the court after the regular discharge of the grand jury, or if after such discharge a new indictment becomes requisite by reason of an arrest of judgment or by the quashing of an indictment, or if from any other good and sufficient cause another grand jury may become necessary the court may in its discretion, order that another grand jury be summoned, and the court may to that end forthwith make an order to the county commissioners for the immediate selection and furnishing to the clerk of a list of jurors and may make such further orders to the clerk, sheriff and other officers for an immediate compliance with their duties as may be proper to obtain another grand jury at and during the same term of the court.

Special grand jury.

(5473) § **16**. A grand jury formed and impaneled as to and in a particular case after a challenge or challenges to individual grand jurors have been allowed, shall only be sworn to act in such particular case and as to all other cases at the same term of the court the grand jury shall be formed in the usual manner provided by law.

Court to appoint foreman

(5574) § **17**. From the persons summoned to serve as grand jurors, and appearing, the court must appoint a foreman. The court must also appoint a foreman when a person already appointed is discharged or excused before the grand jury are dismissed.

Oath to foreman.

(5475) § **18**. The following oath must be administered to the foreman of the grand jury:

You, as foreman of this grand jury, shall diligently inquire into, and true presentment make, of all public offenses against this Territory, committed or triable within this county (or subdivision), of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the Territory, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor or affection, or for any reward, or the promise or hope thereof; but in all your presentments, or indictments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God.

Oath to other jurors.

(5476) § **19**. The following oath must be immediately thereupon administered to the other grand jurors present:

The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God.

Grand jury charged.

(5477) § **20**. The grand jury, being impanelled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper as to the nature of of their duties, and as to any charges for public offenses returned to the court, or likely to come before the grand jury.

Jury retires

(5478) § **21**. The grand jury must then retire to a private room and inquire into the offenses cognizable by them.

Grand jury must appoint a clerk.

(5479) § **22**. The grand jury must appoint one of their number as clerk, who must preserve minutes of their proceedings, except of the votes of the individual members, and of the evidence given before them.

Jury discharged.

(5480) § **23**. On the completion of the business before them, or whenever the court shall be of opinion that the public interests will not be subserved by a further continuance of the session, the

grand jury must be discharged by the court; but whether the business be completed or not, they are discharged by the final adjournment of the court.

General powers and duties of grand jury.

(5481) § **24**. The grand jury has power, and it is their duty to inquire into all public offenses committed or triable in the county or subdivision, and to present them to the court, by indictment or accusation in writing.

Indictment defined.

(5482) § **25**. An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

Oath to witness.

(5483) § **26**. The foreman may administer an oath to any witness appearing before the grand jury.

What evidence received.

(5484) § **27**. In the investigation of a charge for the purpose of either presentment or indictment or accusation, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence.

Only best evidence

(5485) § **28**. The grand jury can receive none but legal evidence and the best evidence in degree to the exclusion of hearsay or secondary evidence.

Evidence for defendant.

(5486) § **29**. The grand jury is not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that there is other evidence, they may, by and with the consent of the district attorney, order such evidence to be produced, and for that purpose the district attorney may issue process for the witnesses.

Indictment to be found, when.

(5487) § **30**. The grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Members to give evidence.

(5488) § **31**. If a member of the grand jury knows, or has reason to believe, that a public offense has been committed, which is triable in the county or subdivision, he must declare the same to his fellow jurors, who must thereupon investigate the same.

Subjects for inquiry by the grand jury.

(5489) § **32**. The grand jury must inquire:

First. Into the case of every person imprisoned in the jail of the county or subdivision, on a criminal charge, and not indicted.

Second. Into the condition and management of the public prisons in the county or subdivision; and,

Third. Into the wilful and corrupt misconduct in office of public officers of every description in the county or subdivision.

Have access to prisons.

(5490) § **33**. They are also entitled to free access at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county.

District attorney privileged.

(5491) § **34**. The grand jury may at all reasonable times ask the advice of the court or of the district attorney. The district attorney may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable before them and may interrogate witnesses before them whenever he thinks it necessary, but no other person is per-

mitted to be present during their sessions except the members and a witness actually under examination and no person whomsoever must be permitted to be present during the expression of their opinions or the giving of their votes upon any matter before them.

Proceedings kept secret.

(5492) § **35**. Every member of the grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them.

When juror may disclose proceedings.

(5493) § **36**. A member of the grand jury may, however, be required by any court to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony or upon his trial therefor.

Jurors cannot be questioned.

(5494) § **37**. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors.

ARTICLE 7.—INDICTMENT.

Finding and Presentation of the Indictment.

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1. Finding an indictment.
2 Dismissal of charge.
3 Resubmission of charge.
4. Names of witnesses.
5. Indictment presented, how.
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Rules of Pleading and Form of the Indictment.

SECTION.
7. Forms of pleading.
8. First pleading.
9. Requisites of indictment.
10. Indictment must be certain and direct.
11. Fictitious names.
12 Indictment must charge but one offense.
13. Time of offense.
14. Certain errors not material.
15 Words, how construed.
16. Statute not strictly pursued.
17. Indictment sufficient, when.
18 Certain informalities disregarded.
19. What need not be stated.
20. Pleading a judgment.
21. Pleading private statute.
22. Indictment for libel.
23. Indictment for forgery.
24 Indictment for perjury.
25. Indictment for larceny or embezzlement.
26. Indictment for selling obscene books.
27. When there are several defendants.
28. Accessories and principal.
29. Accessory tried.
30. Compounding a felony.

Finding an indictment.

(5495) § **1**. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be indorsed "A true bill," and the indorsement must be signed by the foreman of the grand jury.

Dismissal of charge.

(5496) § **2**. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the original information of the certified record of the proceedings before the magistrate transmitted to them, must be returned to the

court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Resubmission of charge.

(5497) § **3**. The dismissal of the charge does not, however, prevent its being again submitted to a grand jury as often as the court may so direct. But without such direction it cannot be again submitted.

Name of witnesses.

(5498) § **4**. When an indictment is found, the names of the witnesses examined before the grand jury must, in all cases, be inserted at the foot of the indictment or indorsed thereon before it is presented to the court.

Indictment, presented how,

(5499) § **5**. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk, and remain in his office as a public record.

Proceedings to arrest,

(5500) § **6**. When an indictment is found against a defendant who has not been previously arrested. and is not under bail, the same proceedings must be had as are prescribed against a defendant who fails to appear for arraignment.

Forms of pleading

(5501) § **7**. All forms of pleading in criminal actions, and rules by which the sufficiency of pleadings is to be determined, are those prescribed by this chapter.

First pleading

(5502) § **8**. The first pleading on the part of the Territory is the indictment.

Requisites of indictment

(5503) § **9**. The indictment must contain:

First. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties.

Second. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

Indictment must be certain and direct.

(5504) § **10**. The indictment must be direct and certain as it regards:

First. The party charged.

Second. The offense charged.

Third. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

Fictitious name.

(5505) § **11**. When a defendant is indicted or prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Indictment must charge but one offense.

(5506) § **12**. The indictment must charge but one offense, but the same offense may be set forth in different forms or degrees under different counts; and when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count.

Time of offense

(5507) § **13**. The precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

Certain immaterial errors.

(5508) § **14**. When an offense involves the commission of, or an attempt to commit a private injury, and is described with suffic-

ient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

Words, how construed.

(5509) § **15**. The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

Statute not strictly pursued.

(5510) § **16**. Words used in a statute to define a public offense, need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

Indictment when sufficient.

(5511) § **17**. The indictment is sufficient if it can be understood therefrom:

First. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

Second. That it was found by a grand jury of the county or subdivision in which the court was held.

Third. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his true name is to the jury unknown.

Fourth. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county or subdivision, is triable therein.

Fifth. That the offense was committed at some time prior to the time of finding the indictment.

Sixth. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

Seventh. That the act or omission charged as the offense, is stated with such a degree of certainty, as to enable the court to pronounce judgment upon a conviction according to the right of the case.

Certain informalities disregarded.

(5512) § **18**. No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in the matter of form which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

What need not be stated.

(5513) § **19**. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment

Pleading a judgment.

(5514) § **20**. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

Pleading private statute,

(5515) § **21**. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof, as provided in article 25 of chapter 25.

Indictment for libel.

(5516) § **22**. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the

party libelled of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on trial.

Indictment for forgery

(5517) § **23**. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

Indictment for perjury.

(5518) § **24**. In an indictment for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

Indictment for larceny or embezzlement.

(5519) § **25**. In an indictment for the larceny or embezzlement of money, bank notes, certificates of stock or valuable securities, or for a conspiracy to cheat and defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock or valuable securities, without specifying the coin, number, denomination or kind thereof.

Indictment for selling obscene books.

(5520) § **26**. An indictment for exhibiting, publishing, passing, selling or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof

When there are several defendants

(5521) § **27**. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Accessories and principals.

(5522) § **28**. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated, and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, must hereafter be indicted, tried and punished as principals, and no additional facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

Accessory tried.

(5523) § **29**. An accessory to the commission of a felony may be indicted, tried and punished, though the principal felon be neither indicted nor tried, and though the principal may have been acquitted.

Compounding a felony.

(5524) § **30**. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or

promise therefor, upon the agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense have not been indicted or tried.

ARTICLE 8.—PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE COMMENCEMENT OF TRIAL.

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61. Clerk to prepare ballots.
62 Names of all jurors to be called.
63. Manner of drawing jurors.
64. Disposition of the ballots.
65. After jury is discharged.
66. When juror is absent.
67. If all jurymen do not appear.
68. Names put in box.
69. Drawing the jury.
70. Number of jury, how sworn.
71. If number of jurymen fails.
72. Affirmation.
73. Postponement for cause.

Defendant arraigned.

(5525) § **1.** When the indictment is filed, the defendant must be arraigned thereon before the court in which it is found, if triable therein, if not, before the court to which it is removed or transmitted.

If for felony, defendant must be present.

(5526) § **2.** If the indictment is for a felony the defendant must be personally present, but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

Officer to bring him before court.

(5527) § **3.** When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned, and the officer must do so accordingly.

Bench warrant to issue, when

(5528) § **4.** If the defendant has been discharged on bail, or have deposited money instead thereof, and does not appear to be arraigned, when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Clerk to issue warrant.

(5529) § **5.** The clerk, on the application of the district attorney, may, accordingly, at any time after the order, whether the court be setting or not, issue a bench warrant into one or more counties.

Form of warrant.

(5530) § **6.** The bench warrant upon the indictment must, if the offense is a felony, be substantially in the following form:

TERRITORY OF OKLAHOMA, } S.S.
COUNTY OF ..... }

To any Sheriff, constable, policeman or marshal in this Territory:

An indictment having been found on the.....day of..... ....., A.D. 18...., in the district court in and for the county (or sub-division) of ....., charging C. D. with the crime of ....., (designating it generally) you are therefore commanded forthwith to arrest the above named C. D., and bring him before the court (or before the court to which the

indictment may have been removed, naming it) to answer said indictment, or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of.....

.....

Given under my hand, with the seal of said court affixed this ..... day of ....., A.D. 18.....

By order of the court.

(SEAL) E. F., Clerk.

When offense is misdemeanor or bailable felony.

(5531) § **7.** If the offense is a misdemeanor or a bailable felony, the bench warrant must be in a similar form, adding to the body thereof a direction to the following effect:

Or if he requires it that you take him before any magistrate in that county or in county in which you arrest him, that he may give bail to answer the indictment.

Court to fix amount of bail.

(5532) § **8.** If the offense charged is bailable the court, upon directing the bench warrant to issue, must fix the amount of bail; and an indorsement must be made on the bench warrant and signed by the clerk, to the following effect:

The defendant is to be admitted to bail in the sum of ..... dollars.

Offenses not bailable.

(5532) § **9.** The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county or subdivision in which the indictment is found.

Warrant served in any county

(5534) § **10.** The bench warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by a magistrate of that county.

Taking bail.

(5535) § **11.** If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon.

Duty of court when indictment is found

(5536) § **12.** When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented, or sent or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in an increased amount, to be specified in the order.

Defendant present in court.

(5537) § **13.** If the defendant is present when the order is made, he must be forthwith committed accordingly. If he is not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

Counsel appointed before arraignment.

(5538) § **14.** If the defendant appear for arraignment, without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desire the aid of counsel. If he desires, and is unable to employ counsel, the court must assign counsel to defend him.

Arraignment made, how.

(5539) § **15.** The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in reading the indictment to the defendant, and asking him whether he pleads guilty or not guilty to the indictment.

True name of defendant.

(5540) § **16**. When the defendant is arraigned, he must be informed that if the name by which he is indicted be not his true name, he must then declare his true name or be proceeded against by the name in the indictment.

No name given.

(5541) § **17**. If he gives no other name, the court may proceed accordingly.

Another name given.

(5542) § **18**. If he allege that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Time to answer given,

(5543) § **19**. If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment.

Move to set aside, demur or plead.

(5544) § **20**. If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

Causes for setting aside the indictment

(5545) § **21**. The indictment must be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases.

First. When it is not found, indorsed presented or filed, as prescribed in this act.

Second. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment, or indorsed thereon.

Third. When a person is permitted to be present during the session of the grand jury, while the vote on the finding of the indictment is being taken.

On motion made, objections waived

(5546) § **22**. If the motion to set aside the indictment be not made, the defendant is precluded from afterward taking the objections mentioned in the last section.

Motion heard, when.

(5547) § **23**. The motion must be heard at the time it is made unless for good cause the court postpone the hearing to another time.

Motion denied, answer immediately.

(5548) § **24**. If the motion be denied, the defendant must immediately answer to the indictment, either by demurring or pleading thereto.

When defendant discharged,

(5549) § **25**. If the motion be granted the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him, unless it direct that the case be re-submitted to the same, or another grand jury.

Resubmission of case.

(5550) § **26**. If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain, unless he be admitted to bail, or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment, unless a new indictment is found before the next

grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed in the preceding section.

Setting aside indictment not a bar.

(5551) § **27**. An order to set aside an indictment, as provided in this chapter, is no bar to a further prosecution for the same offense.

Defendant's pleading.

(5552) § **28**. The only pleading on the part of the defendant is either a demurrer or a plea.

Made in open court.

(5553) § **29**. Both the demurrer and the plea must be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

When defendant may demur.

(5554) § **30**. The defendant may demur to the indictment when it appears upon the face thereof, either:

First. That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county or subdivision.

Second. That it does not substantially conform to the requirements of this act.

Third. That more than one offense is charged in the indictment.

Fourth. That facts stated do not constitute a public offense.

Fifth. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosection.

Requisites of demurrer.

(5555) § **31**. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of the objection to the indictment, or it must be disregarded.

Objections heard.

(5556) § **32**. Upon the demurrer being filed, the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

Judgment of court.

(5557) § **33**. Upon considering the demurrer, the court must give judgment either sustaining or overruling it, and an order to that effect must be entered upon the minutes.

Effect if demurrer is sustained

(5558) § **34**. If the demurrer is sustained, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection on which the demurrer is sustained may be avoided in a new indictment, direct the case to be resubmitted to the same or another grand jury.

Defendant discharged.

(5559) § **35**. If the court do not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he have deposited money instead of bail, the money must be refunded to him.

Proceedings if resubmitted.

(5560) § **36**. If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in this act, or in sections 5548, 5549 and 5550.

Objections how taken.

(5561) § **37**. When the objections mentioned in section 5554 appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated

do not constitute a public offense, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

Pleas classified.

(5562) § **38**. There are three kinds of pleas to an indictment. A plea of:

First. Guilty.

Second. Not guilty.

Third. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

Plea must be oral.

(5563) § **39**. Every plea must be oral, and must be entered upon the minutes of the court.

Form of plea.

(5564) § **40**. The plea must be entered in substantially the following form:

First. If the defendant plead guilty:

The defendant pleads that he is guilty of the offense charged in this indictment.

Second. If he plead not guilty:

The defendant pleads that he is not guilty of the offense charged in this indictment.

Third. If he plead a former conviction or acquittal:

The defendant pleads that he has already been convicted (or acquitted, as the case may be), of the offense charged in this indictment, by the judgment of the court of. .. ..(naming it), rendered at.....(naming the place), on the.....day of ....

Requisites of plea of guilty.

(5565) § **41**. A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it can be put in by counsel.

Plea may be withdrawn.

(5566) § **42**. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

Issues on plea.

(5567) § **43**. The plea of not guilty puts in issue every material allegation in the indictment.

Evidence under the plea.

(5568) § **44**. All matters of fact tending to establish a defense other than specified in the third subdivision of section 5562, may be given in evidence under the plea of not guilty.

Acquittal of another offensn

(5569) § **45**. If the defendant was formerly acquitted on the ground of variance between the indictment and proof, or the indictment was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

Acquitted on merits.

(5570) § **46**. When, however, he was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form of substance in the indictment on which he was acquitted.

Former acquittal or conviction.

(5571) § **47**. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment.

Refusal to plead.

(5572) § **48**. If the defendant refuse to answer the indictment by demurrerer or plea, a plea of not guilty must be entered.

Action removed how and when.

(5573) § **49**. A criminal action, prosecuted by indictment, may, at any time before the trial is begun, on the application of the defendant, be removed from the court and county in which it is pending as follows:

First. If the offense charged in the indictment, be punishable with death or imprisonment in the Territorial prison for life, if it be made to appear by the affidavit of the accused, and two disinterested persons that a fair and impartial trial cannot be had in such county, the change must be granted.

Second. If the offense charged in the indictment be punishable with confinement in and for a term less than life in the Territorial prison, and it be shown to the court by the affidavit of the accused corroborated by five disinterested persons, that a fair and impartial trial cannot be had in the county, then the court may in his his discretion, award or refuse the change; the order shall be reviewable on appeal.

Third. In other cases no change shall be allowed, but one such removal can be had. If the accused shall make affidavit that he cannot have an impartial trial by reason of the bias or prejudice of the presiding judge of the district court, where the indictment is pending, the judge of such court shall designate and call any other judge of a district court to preside at such trial, and it shall be the duty of such other judge to so preside and to do any other act in reference thereto, as though he was the presiding judge of such district court.

Duty of clerk on order of removal.

(5574) § **50**. The order of removal must be entered upon the minutes, and the clerk must thereupon make out and transmit to the court to which the action is removed, a certified copy of the order of removal and of the records, pleadings and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

Disposition of defendant.

(5575) § **51**. If the defendant is in custody, the order must provide for the removal of the defendant, by the sheriff of the county or subdivision where he is imprisoned, to the custody of the proper officer of the county or subdivision to which the action is removed, and he must be removed according to the terms of such order.

Court may require bail.

(5576) § **52**. When the court has ordered a removal of the action, it may require the accused, if the offense be then bailable, to enter into an undertaking with good and sufficient sureties to be approved by the court, in such sum as the court may direct, conditioned for his appearance in the court to which the action has been removed, on the first day of the next term thereof, and to abide the order of such court; and in default of such undertaking, a warrant shall be issued to the sheriff or other proper officer, commanding him safely to keep, and at the proper time to convey the prisoner to the jail of the county or subdivision where he is to be tried, there to be safely kept by the jailer thereof until discharged by due course of law.

Witnesses to recognize.

(5577) § **53**. When a removal of the action is allowed, the court may recognize the witnesses on the part of the Terri-

tory to appear before the court to which the defendant is to be tried.

Trial, records and papers,

(5578) § **54**. The court to which the action is removed must proceed to trial and judgment therein the same in all respects as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must at any time upon application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

Removal of cause by territory.

(5579) § **55**. The district attorney, on behalf of the Territory, may also apply in a similar manner for a removal of the action, and the court being satisfied that it will promote the ends of justice, may order such removal upon the same terms and to the same extent as are provided in this chapter, and the proceedings on such removal shall be in all respects as above provided.

Issue of fact arises, when.

(5580) § **56**. An issue of fact arises,

First. Upon a plea of not guilty, or.

Second. Upon a plea of a former conviction or acquittal of the same offense.

Issue of fact, how tried.

(5581) § **57**. Issues of fact must be tried by a jury.

Defendant must be present.

(5582) § **58**. If the indictment is for a felony, the defendant must be personally present at the trial, but if for a misdemeanor not punishable by imprisonment, the trial may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of identification, the court may, upon application of the district attorney, by an order or warrant, require the personal attendance of the defendant at the trial.

Who are jurors.

(5583) § **59**. The jurors duly drawn and summoned for the trial of civil actions, are also the jurors for the trial of criminal actions.

Trial jury, how formed.

(5584) § **60**. Trial juries for criminal actions may also be formed in the same manner as trial juries in civil actions.

Clerk to prepare ballots

(5585) § **61**. At the opening of the court the clerk must prepare separate ballots. containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the same cannot be seen, and must deposit them in a sufficient box.

Names of all jurors to be called

(5586) § **62**. When the case is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and the court in its discretion may order that an attachment issue against those who are absent; but the court may, in its discretion, wait or not for the return of the attachment.

Manner of drawing juror.

(5587) § **63**. Before the name of any juror is drawn, the box must be closed and shaken, so as to intermingle the ballots therein. The clerk must then, without looking at the ballots, draw them from the box.

Disposition of ballots

(5588) § **64**. When the jury is completed, the ballots containing the names of the jurors sworn must be laid aside and kept

apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

After jury discharged.

(5589) § **65**. After the jury is so discharged, the ballots containing their names must be again folded and returned to the box, and so on, as often as a trial is had.

When juror is absent.

(5590) § **66**. If a juror be absent when his name is drawn, or be set aside, or excused from serving on the trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn.

If all jurymen do not appear.

(5591) § **67**. When a jury has been duly summoned, if, upon calling the cause for trial, twenty-four of the jurors summoned do not appear, the court may, in its discretion, order the sheriff to summon from the body of the county or subdivision, as many persons as it may think proper, at least sufficient to make twenty-four jurors, from whom a jury for the trial of the cause may be selected.

Names put in box.

(5592) § **68**. The names of the persons summoned to complete the jury must be written on distinct pieces of paper, folded each as nearly alike as possible, and so that the name can not be seen, and must be deposited in the box before mentioned.

Drawing the jury.

(5593) § **69**. The clerk must thereupon, under the direction of the court, publicly draw out of the box so many of the ballots, one after another, as are sufficient to form the jury.

Number of jury, how sworn.

(5594) § **70**. The jury consists of twelve men, chosen as prescribed by law, and sworn or affirmed well and truly to try and true deliverance to make between the Territory of Oklahoma and the defendant whom they shall have in charge, and a true verdict to give according to the evidence; which verdict must be unanimous.

If number of jurymen fail.

(5595) § **71**. If a sufficient number cannot be obtained from the box to form a jury, the court may, as often as is necessary, order the sheriff to summon from the body of the county or subdivision, so many persons qualified to serve as jurors as it deems sufficient to form a jury. The jurors so summoned may be called from the list returned by the sheriff, and so many of them not excused or discharged, as may be necessary to complete the jury, must be impaneled and sworn.

Affirmation.

(5596) § **72**. Any juror who is conscientiously scrupulous of taking the oath above described, shall be allowed to make affirmation, substituting for the words "so help you God," at the end of the oath, the following: "This you do affirm under the pains and penalties of perjury."

Postpone men for cause.

(5597) § **73**. When an indictment is called for trial,, or at any time previous thereto, the court may, upon sufficient cause shown by either party, as in civil cases, direct the trial to be postponed to another day in the same or next term.

ARTICLE 9.—CHALLENGING THE JURY.

SECTION.
1. Challenges classed.
2. When several defendants.
3. Panel defined.
4. Challenge to the panel.
5. Cause for challenge to panel.
6. When taken.
7. Issue on the challenge.
8. Proceedings on exception to challenge.
9. When challenge is denied.
10. Trial of challenge.
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12. Discharge of jury.
13. Court to inform defendant of his right to challenge.
14. Nature of challenge.
15. Challenge when taken.
16. Peremptory challenge, who taken by.
17. Peremptory challenges, number each party entitled to.
18. Prosecutor's challenges.
19. Challenge for cause.
20. Challenge for cause classed.
21. Causes for challenge.
22. Particular cause.
23. Challenge for implied bias.
24. Exemption from jury service.
25. Cause stated in challenge.
26. Exception to the challenge.
27. Challenge tried, how
28. Juror challenged as a witness.
29. Other witness.
30. Duty of court on trial of challenge.
31. Order of taking challenges.
32. Order of challenge for cause.
33. Peremptory challenge.

Challenges classed

(5598) § **1**. A challenge is an objection made to the trial jurors, and is of two kinds:

First. To the panel.

Second. To an individual juror.

When several defendants

(5599) § **2**. When several defendants are tried together they cannot sever their challenges, but must join therein.

Panel defined

(5600) § **3**. The panel is a list of jurors returned by a sheriff, to serve at a particular court, or for the trial of a particular action.

Challenge to panel

(5601) § **4**. A challenge to the panel is an objection made to all the trial jurors returned, and may be taken by either party.

Cause for challenge

(5602) § **5**. A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn, from which the defendant has suffered material prejudice.

When taken.

(5603) § **6**. A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

Issue on the challenge.

(5604) § **7**. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the court, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Proceedings on exception to challenge

(5605) § **8**. If, on the exception, the court deem the challenge sufficient, it may, if the justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed; the court may, in like manner, permit an amendment of the challenge.

When challenge denied.

(5606) § **9**. If the challenge is denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court, and the court must proceed to try the questions fact.

Trial of challenge.

(5607) § **10**. Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complain-

ed of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of challenge.

Bias of officer

(5608) § **11**. When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner as if made to a juror.

Discharge of jury.

(5609) § **12**. If, upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury, and another jury can be summoned for the same term forthwith from the body of the county or subdivision; or the judge may order a jury to be drawn and summoned in the regular manner. If it be disallowed, the court must direct the jury to be impanelled.

Court to inform defendant of his right to challenge.

(5610) § **13**. When twelve men are called as jurors, the defendant must be informed by the court or under its direction, of his right to challenge the jurors, and that he must do so before the jury is sworn to try the cause.

Nature of challenge.

(5611) § **14**. A challenge to an individual juror, is either;

First. Peremtory; or,

Second. For cause.

Challenge, when taken.

(5612) § **15**. It must be taken when the jury is full and as soon as one person is removed by challenge, another must be put in his place, until the challenges are exhausted or waived. The court for good cause shown may permit a juror to be challenged after he is sworn to try the cause, but not after the testimony has been partially heard.

Peremptory challenge, who taken by.

(5613) § **16**. A peremptory challenge can be taken either by party, and may be oral It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

Peremptory challenge, number each party entitled to.

(5614) § **17**. In all criminal cases the county attorney and the defendant are each entitled to the following peremptory challenges:

First. For capital offenses, twelve jurors.

Second. In prosecution for offenses punishable by imprisonment in the Territorial prison, seven jurors.

Third. In other prosecutions, five jurors.

Prosecutor's challenges

(5615) § **18**. The prosecuting attorney in capital cases may challenge peremptorily six jurors; in other cases three jurors.

Challenge for cause

(5616) § **19**. A challenge for cause may be taken either by the Territory or the defendant.

Challenge for cause classed.

(5617) § **20**. It is an objection to a particular juror and is either:

First. General, that the juror is disqualified from serving in any case on trial; or,

Second. Particular, that he is disqualified from serving in the case on trial.

Causes for challenge.

(5618) § **21**. General causes of challenges are:

First. A conviction for felony.

Second. A want of any of the qualifications prescribed by law,

to render a person a competent juror, including a want of knowledge of the English language as used in the courts.

Third. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

Particular case

(5619) § **22**. Particular causes of challenge are of two kinds:

First. For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this chapter as implied bias.

Second. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot try the issue impartially, without prejudice to the substantial rights of the party challenging, and which is known in this chapter as actual bias.

Challenge for implied bias.

(5620) § **23**. A challenge for implied bias may be taken for all or any of the following cases, and for no other:

First. Consanguinity or affinity within the fourth degree, inclusive, to the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or to the defendant.

Second. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

Third. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution.

Fourth. Having served on the grand jury which found the indictment, or on a coronor's jury which inquired into the death of a person whose death is the subject of the indictment.

Fifth. Having served on a trial jury which has tried another person for the offense charged in the indictment.

Sixth. Having been one of the jury formerly sworn to try the indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it.

Seventh. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

Eight. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty of, in which case he shall neither be permitted nor compelled to serve as a juror.

Exemption from jury service

(5621) § **24**. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Cause stated in challenge.

(5622) § **25**. In a challenge for implied bias, one or more of the causes stated in the second preceding section must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of the third preceding section, must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted

to such jury, founded upon rumor, statements in public journals, or common noteriety, provided it appears to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered upon the minutes of the court.

Exception to the challenge.

(5623) § **26**. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same procedings must be had thereon as prescribed in section 5604, except that if the exception be allowed the juror must be excluded. The adverse [party] may also orally deny the facts alledged as the grounds of challenge.

Challenge, how tried.

(5624) § **27**. All challenges, whether to the panel or to individual jurors, shall be tried by the court, without the aid of triers.

Juror challenged as a witness

(5625) § **28**. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disapprove the challenge, and is bound to answer every question pertinent to the inquiry therein.

Other witnesses.

(5626) § **29**. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of testimony, on the trial of the challenge.

Duty of the court on trial of challenge.

(5627) § **30**. On the trial of a challenge, the court must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

Order of taking challenges.

(5628) § **31**. All challenges to an individual juror must be taken, first by the defendant and then by the Territory alternately.

Order of challenges for cause.

(5629) § **32**. The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

First. To the panel.

Second. To an individual juror for a general disqualification.

Third. To an individual juror for implied bias.

Fourth. To an individual juror for actual bias.

Peremptory challenges.

(5630) § **33**. If all challenges on both sides are disallowed, either party, first the Territory and then the defendant, may take a peremptory challenge, unless the party's peremptory challenges are exhausted.

SECTION.
1. Order of trial.
2. Court to decide the law.
3. Jury to determine facts in case of libel, court's instruction.
4. Where jury only determine fact.
5. Restriction of argument.
6. Defendant presumed innocent.
7. Doubt as to degree of guilt.
8. Defendants tried separately.
9. Discharge of defendant for a witness.
10. Same, duty of court.
11. Defendant may be competent witness.
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13. Overt act for conviction of conspiracy.
14. Same, accomplice.
15. Evidence of false pretenses.
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17. Court may suspend proceedings, when.
18. Same, not a former acquittal.
19. Trial on original indictment.
20 Jury may be discharged

SECTION.
21. Disposition of prisoner.
22. Same, bail and records.
23. Warrant not from proper county.
24. Proceedings if arrested.
25. Offense not punishable.
26. Court may advise jury to acquit
27. Jury may view place.
28. Juror having personal knowledge of facts.
29. Custody and conduct of jury.
30. Jury admonished by the court.
31. Juror taken sick.
32. Burden of proof in mitigation of murder.
33. Proof on trial for bigamy.
34. Proof on trial for forging.
35. Requisites of charge of the court.
36. Jury after the charge.
37 Defendant may be committed
38. Substitute for district attorney.
39. Perjury, when.

Order of trial.

(5631) § 1. The jury having been impanelled and sworn, the trial must proceed in the following order:

First. If the indictment is a felony, the clerk or district attorney must read it, and state the plea of the defendant to the jury. In other cases this formality may be dispensed with.

Second. The district attorney, or other counsel for the Territory, must open the case and offer the evidence in support of the indictment.

Third. The defendant or his counsel may then open his defense, and offer his evidence in support thereof.

Fourth. The parties may then, respectively, offer rebutting testimony only, unless the court for good reason, in furtherance of justice, or to correct an evident oversight, permit them to offer evidence upon their original case.

Fifth. When the evidence is concluded, the attorneys for the prosecution and the defense, may submit to the court written instructions. If the questions of law involved in the instructions are to be argued, the court shall direct the jury to withdraw during the argument, and after the argument, must settle the instructions, and may give or refuse any instruction asked, or may modify the same as he deems the law to be. Instructions refused shall be marked in writing by the judge, if modified, modification shall be shown in the instruction, and by refusal to give instructions or the modification thereof, shall be deemed to be excepted to. When the instructions are thus settled, the jury, if sent out, shall be recalled and the court shall thereupon read the instructions to the jury

Sixth. Thereupon, unless the case is submitted to the jury without argument, the counsel for the Territory shall commence, and the defendant or his counsel shall follow, then the counsel for the Territory shall conclude the argument to the jury. During the argument the attorneys shall be permitted to read and comment upon the instructions as applied to the evidence given, but shall not ar-

gue to the jury the correctness or incorrectness of the propositions of law therein contained. The court may permit one or more counsel to address the jury on the same side, and may arrange the order in which they shall speak, but shall not without the consent of the attorney's limit the time of their arguments. When the arguments are concluded, if the court be of the opinion, that the jury might be misled by the arguments of counsel, he may to prevent the same further instruct the jury. All instructions given shall be in writing unless waived by both parties, and shall be filed and become a part of the record in the case.

Court to decide the law.

(5632) § **2**. The court must decide all questions of law which arise in the course of the trial.

Jury to determine facts in case of libel, courts instructions.

(5633) § **3**. On the trial of an indictment for libel, the jury shall determine the facts under the instructions of the court as in other cases.

Jury limited to questions of fact.

(5634) § **4**. On the trial of an indictment, questions of law are to be decided by the court, and the questions of fact are to be decided by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive the law which is laid down as such by the court.

Restriction of argument,

(5635) § **5**. If the indictment is for an offense punishable with death, three counsel on each side may argue the case to the jury. If it is for any other offense the court may, in its discretion, restrict the argument to one counsel on each side.

Defendant presumed innocent.

(5636) § **6**. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted.

Doubt as to degree of guilt.

(5637) § **7**. When it appears that a defendant has committed a public offense and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degree only.

Defendants tried separately.

(5638) § **8**. When two or more defendants are jointly indicted for a felony, any defendant requiring it must be tried separately. In other cases defendants jointly prosecuted may be tried separately or jointly, in the discretion of the court.

Discharge of defendant for a witness.

(5639) § **9**. When two or more persons are included in the same indictment, the court may, at any time time before the defendants have gone into their defense, on the application of the district attorney, direct any defendant to be discharged from the indictment. that he may be a witness for the Territory.

Same, duty of court

(5640) § **10**. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must, before the evidence is closed, in order that he may be a witness for his co-defendant, submit its said opinion to the jury, who, if they so find, may acquit the particular defendant for the purpose aforesaid.

Defendant may be a competent witness

(5641) § **11**. In the trial of all indictments, informations, complaints and other proceedings against persons charged with the commission of a crime, offenses and misdemeanors before any court

or committing magistrate in this Territory, the person charged shall at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any presumption against him, nor be mentioned on the trial if commented upon by counsel it shall be ground for a new trial.

Rules of evidence.

(5642) § **12.** The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this chapter.

Overt act for conviction of conspiracy.

(5643) § **13.** Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but any other overt act, not alleged in the indictment may be given in evidence.

Same, accomplice.

(5644) § **14.** A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely show the commission of the offense or the circumstances thereof.

Evidence of false pretenses.

(5645) § **15.** Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof, be in writing, either subscribed by, or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corroborating circumstances. But this section does not apply to prosecution for falsely representing or personating another, and in such assumed character, marrying or receiving money or property.

Evidence of seduction.

(5646) § **16.** Upon a trial for inveigling, enticing or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution, or aiding or assisting therein, or for having, under promise of marriage, seduced and had illicit connection with an unmarried female of previous chaste character, the defendant cannot be convicted upon testimony of the person injured unless she is corroborated by other evidence tending to connect the defendant with the commission of the offense.

Court may suspend proceedings, when

(5647) § **17.** If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail, to answer any new indictment which may be found against him for the higher offense.

Same, not a former acquittal.

(5648) § **18.** If an indictment for the higher offense is found by a grand jury impanelled within a year next thereafter, he must be tried thereon, and a plea of former acquittal to such last found

indictment is not sustained by the fact of the discharge of the jury on the first indictment.

Trial on original indictment.

(5649) § **19**. If a new indictment is not found for the higher offense within a year as aforesaid, the court must again proceed to try the defendant on the original indictment.

Jury may be discharged.

(5650) § **20**. The court may direct the jury to be discharged, where it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law.

Disposition of prisoners.

(5651) § **21**. If the jury is discharged because the court has not jurisdiction of the offense charged in the indictment, and it appears that it was committed out of the jurisdiction of this Territory, the court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the district attorney to the chief executive officer of the state, territory or district where the offense was committed.

Same, bail and records

(5652) § **22**. If the offense was committed within the exclusive jurisdiction of another county of this Territory, the court must direct the defendant to be committed for such time as it deems reasonable to await a warrant from the proper county for his arrest, or if the offense be a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the undertaking, and the clerk must forthwith transmit a certified copy of the indictment, and all the papers in the action filed with him, to the district attorney of the proper county, the expense of which transmission is chargeable to that county.

Warrant not from proper county prisoner discharged.

(5653) § **23**. If the defendant is not arrested on a warrant from the proper county, he must be discharged from custody, or his bail in the action be exonerated, or money deposited instead of bail refunded, as the case may be, and the sureties in the undertaking, as mentioned in the last section, must be discharged.

Proceedings if arrested.

(5654) § **24**. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

Not punishable offense, court discharge prisoner.

(5655) § **25**. If the jury be discharged because the fact as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail that the bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new indictment can be framed, upon which the defendant can be legally convicted, in which case it may direct that the case be resubmitted to the same or another grand jury.

Court may advise jury to acquit.

(5656) § **26**. If, at any time after the evidence on either side is closed, the court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice, nor can the court, for any cause, prevent the jury from giving a verdict.

Jury may view place.

(5657) § **27**. When, in the opinion of the court, it is proper that the jury should view the place in which the offense was charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a person appointed by the court for that purpose, and the officers must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

If juror has personal knowledge of a fact in controversy must declare it in open court.

(5658) § **28**. If a juror have any personal knowledge respecting a fact in controversy in a cause he must declare it in open court during the trial. If, during the retirement of a jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

Custody and conduct of jury.

(5659) § **29**. The jurors sworn to try an indictment, may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or to be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into the court at the next meeting thereof.

Jury admonished by the court.

(5660) § **30**. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

When juror is taken sick.

(5661) § **31**. If, before the conclusion of a trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impanelled.

Burden of proof in mitigation of murder.

(5663) § **32**. Upon a trial for murder, the commission of the homicide by ths defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

Proof on trial for bigamy.

(5663) § **33**. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when the second marriage took place out of this Territory, proof

of that fact, accompanied with proof of co-habitation thereafter in this Territory, is sufficient to sustain the charge.

Proof on trial for forgery.

(5664) § **34**. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation, and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

Requisites of charge of court.

(5665) § **35**. In charging the jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict, and if it state the testimony of the case, it must in addition inform the jury that they are the exclusive judges of all questions of fact. Either party may present to the court any written charge, and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused the court must indorse or sign its decision. If part of any written charge be given and part refused the court must distinguish, showing by the indorsement or answer what part of each charge was given and what part refused.

Jury after the charge.

(5666) § **36**. After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

Defendant may be committed.

(5667) § **37**. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial order him to be committed to the custody of the proper officer of the county to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

Substitute for district attorney.

(5668) § **38**. If the district attorney fails, or is unable to attend at the trial, the court must appoint some attorney at law to perform the duties of the county attorney on such trial.

Perjury, when

(5669) § **39**. In cases of perjury, where the perjury is charged to have been committed in the court it shall be sufficient to show that the oath was administered by any officer of the court authorized so to do, or that the defendant testified and gave his testimony as under oath, or if the question be in doubt as to what particular officer administered the oath, it may be shown that it was administered by any officer authorized so to do.

Chap. 72. ARTICLE 11.—CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

SECTION.
1. The jury room.
2. Food and lodging.
3. Papers the jury may take.
4. Jury brought into court for information.
5. Juror sick after retirement.
6. Jury cannot be discharged until when.
7. Cause retried.
8. Adjournment from time to time; final adjournment discharges jury.

The jury room.

(5670) § **1**. A room must be provided by the board of commissioners of a county for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the commissioners neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Food and lodging.

(5671) § **2**. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, upon the order of the court, at the expense of the county, with suitable and sufficient food and lodging.

Papers the jury may take.

(5672) § **3**. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, or copies of such parts of public records or private documents, given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

Jury brought into court for information

(5673) § **4**. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed on a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to the district attorney and the defendant or his counsel, or after they have been called.

Juror sick after retirement.

(5674) § **5**. If, after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged.

Jury cannot be discharged until, when

(5675) § **6**. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless at the expiration of such time as the court deems proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

Cause retried.

(5676) § **7**. In all cases where a jury are discharged or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term, as the court may direct.

(5677) § **8.** While the jury are absent the court may adjourn from time to time as to other business, but it is nevertheless deemed open for every purpose connected with the cause submitted to them, until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

Adjournment from time to time, final discharges jury.

ARTICLE 12.—VERDICT.

SECTION.
1. Return of the verdict.
2 Verdict rendered in presence of defendant.
3. Proceedings when jury appear.
4. Form of general verdict.
5. Degree of crime stated.
6. May find any degree.
7. Same, when several defendants.
8 Jury may reconsider verdict.
9. Form of verdict.
10. Judgment when jury persist in informal verdict.
11. Jury may be polled.
12. Clerk to record verdict.
13. Defendant discharged, when.
14. Committal of defendant on conviction.
15. Defense of insanity and acquittal.

(5678) § **1.** When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the cause must be again tried, at the same or another term.

Return of the verdict.

(5679) § **2.** If the indictment is for a felony, the defendant must, before the verdict is received, appear in person. If it is for a misdemeanor, the verdict may, in the discretion of the court, be rendered in his absence.

Verdict rendered in presence of defendant.

(5680) § **3.** When the jury appear, they must be asked, by the court or the clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required declare the same.

Proceedings when jury appear.

(5681) § **4.** A general verdict upon a plea of not guilty, is either "guilty," or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the Territory," or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and the proof, the verdict must be "not guilty by reason of variance between indictment and proof."

Form of general verdict.

(5682) § **5.** Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

Degree of crime stated

(5683) § **6.** The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit the offense.

May find any degree.

(5684) § **7.** On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment

Same, when there are several defendants.

must be entered accordingly, and the case as to the rest may be tried by another jury.

Jury may reconsider their verdict.

(5685) § **8**. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

Informal verdict.

(5686) § **9**. If the jury render a verdict not in form, the court may, with proper instructions as to the law, direct them to reconsider it, and it cannot be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury.

Judgment when jury persist in informal verdict.

(5687) § **10**. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant, upon the issue, or judgment be given against him on a special verdict.

Jury may be polled.

(5688) § **11**. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Clerk to record verdict

(5689) § **12**. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and must read it to the jury and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

Defendant discharged, when.

(5690) § **13**. If the judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as judgment is given, except that when the acquittal is for a variance between the proof and the indictment which may be obviated by a new indictment the court may order his detention to the end that a new indictment may be preferred in the same manner and with like effect as provided in cases where the jury is discharged.

Committed upon conviction.

(5691) § **14**. If the general verdict is rendered against the defendant he must be remanded if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant.

Defense of insanity and acquittal

(5692) § **15**. If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court may thereupon, if the defendant is in custody and they deem his discharge dangerous to

the public peace or safety order him to be committed to the care of the sheriff until he becomes sane.

ARTICLE 13.—BILLS OF EXCEPTION.

SECTION.
1. Exceptions to matters of law.
2. Bill signed and filed.
3. Character of bill of exception.
4. When prepared if not settled at trial.
5. Refusal to settle and sign.
6. Time extended.
7. Exceptions deemed abandoned, when.
8. What exceptions must contain.
9. Bill to be filed, when
10. Other exceptions.

Exceptions to matters of law.

(5693) § **1**. On the trial of an indictment, exceptions may be taken by the defendant to the decision of the court upon a matter of law by which his substantial rights are prejudiced, and not otherwise, in any of the following cases:

First. In disallowing a challenge to the panel of the grand or petit jury, or to individual juror for implied bias.

Second. In admitting or rejecting witnesses or testimony, on the trial of a challenge to a juror for actual bias.

Third. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue, or on any other matter prejudicial to the rights of the defendant.

Bill signed and filed.

(5694) § **2**. A bill containing the exceptions must be settled and signed by the presiding judge, and filed with the clerk.

Character of bill of exceptions.

(5695) § **3**. The bill of exceptions must be settled at the trial, unless the court otherwise direct. If time be given, the court shall order the period thereof, not exceeding sixty days, and bills of exceptions filed within such period shall be valid. If no such direction be given, the point of the exception must be particularly stated in writing, and delivered to the court, and must immediately be corrected or added to, until it is made conformable with the truth.

When prepared if not settled at trial.

(5696) § **4**. If the bill of exceptions be not settled at the trial, it must be prepared and served within three days thereafter on the district attorney, who may, within three days thereafter, serve on the defendant or his counsel amendments thereto. The defendant may then, within three days, serve the district attorney with a notice to appear before the presiding judge of the court, at a specified time, not less than five nor more than ten days thereafter, to have the bill of exceptions settled.

Refusal to settle and sign

(5697) § **5**. At the time appointed the judge must settle and sign the bill of exceptions: *Provided, however*, If the judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled, may apply by petition to the Supreme Court, to prove the same. The application may be made in the mode and manner and under such regulations as the court may prescribe, and the bill, when proven, must be certified by a justice thereof as correct and filed with the clerk of the court in which the action was tried; and when so filed, it has the same force and effect as if settled by the judge who tried the cause.

Chap. 72.

Time extended.

(5698) § **6.** The time for preparing the bill of exceptions, or the amendments thereto, or for settling the same, may be enlarged by the consent of the parties, or by the presiding judge.

Exceptions deemed abandoned, when.

(5699) § **7.** If the bill of exceptions be not served within the time prescribed in section 5696, or within the enlarged time therefor, as prescribed in the last section, the exceptions are deemed abandoned. If it be served and the parties omit, within the time limited by section 5696, the one to prepare the amendments, and the other to give notice of appearance before the judge, they are respectively deemed, the one to have agreed to the bill of exceptions, the other to the amendmeats.

What exceptions must contain.

(5700) § **8.** The bill of exceptions need contain only so much of the evidence, as is necessary to present the questions of law upon which the exceptions were taken. If the evidence was taken by a stenographic reporter, it shall be sufficient in the bill of exceptions to refer thereto, by unmistakable reference and when transcribed, the evidence so taken may be inserted in the bill of exceptions, and become part thereof. The judge must on the settlement of the bill of exceptions, whether agreed to by the parties or not, strike out all irrelevant matters contained therein.

Bill filed, when.

(5701) § **9.** The bill of exceptions must be filed with the clerk of the court at the time of, or before taking the appeal.

Other exceptions.

(5702) § **10.** Exceptions may be taken by either party to a decision of the court or judge upon a matter of law:

First. In granting or refusing a motion in arrest of judgment.

Second. In granting or refusing a motion for a new trial.

ARTICLE 14.—NEW TRIAL AND ARREST OF JUDGMENT.

SECTION.
1. New trial, what it is.
2. Court has power to grant new trial.
3. Application made, when.
4. Motion in arrest of judgment
5. Court may arrest on its own motion.
6. Defendant guilty, but indictment insufficient.

(5703) § **1.** A new trial is a re-eximation of the issue in the same court, before another jury, after a verdict has been given. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to, either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment.

Court has power to grant new trial, when.

(5704) § **2.** The court in which a trial has been had upon an issue of fact, has power to grant a new trial, when a verdict has been rendered against the defendant by which his substantial rights have been prejudiced, upon his application in the following cases only:

First. When the trial has been had in his absence, if the indictment is for felony.

Second. When the jury has received any evidence out of court other than that resulting from a view of the premises.

Third. When the jury have separated without leave of the

court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented.

Fourth. When the verdict has been decided by lot, or by any means other other than a fair expression of opinion on the part of all the jury.

Fifth. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

Sixth. When the verdict is contrary to law or evidence.

Seventh. When new evidence is discovered material to the defendant, and which he could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to produce such affidavits, the court may postpone the hearing of a motion for such length of time as, under all the circumstances of the case, may seem reasonable.

Application must be made, when.

(5705) § **3.** The application for a new trial must be made before judgment, but the court or judge thereof may upon good cause shown allow such application to be made at any time within thirty days after the entry of such judgment. And motions for a new trial on the ground of newly discovered evidence, may be made after judgment at the term in which the cause is tried, or during vacation before the court or judge thereof at any time before the next succeeding term or at such term.

Motion on arrest of judgment.

(5706) § **4.** A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on plea or verdict of guilty, or on a verdict against the defendant on a plea of former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned as grounds of demurrer to the indictment unless such objection has been waived by a failure to demur and must be before or at the time the defendant is called for judgment.

Court may arrest on its own motion, no bar

(5707) § **5.** The court may also, on its own view of any of these defects, arrest the judgment without motion. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found, and in no case of arrest of judgment is the verdict a bar to another prosecution or indictment.

Defendant guilty but indictment insufficient

(5708) § **6.** If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be recommitted to the officer of the proper county or subdivision, or admitted to bail anew to answer the new indictment. If the evidence shows him guilty of another offense, he must be committed or held thereon; but if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged, or if admitted to bail his bail is exonerated, or if money has been deposited instead of bail, it

must be refunded to the defendant, and the arrest of judgment operates as an acquittal of the charge upon which the indictment was founded.

ARTICLE 15.—JUDGMENT AND EXECUTION.

Judgment.

SECTION.
1. Court appoints time for judgment.
2. Time, two days from verdict.
3. Defendant absent in case of misdemeanor.
4. Officer to produce prisoner.
5 Bench warrant when defendant on bail.
6. Clerk to issue warrant.
7. Form of warrant.
8. Warrant served, how.
9. Disposal of defendant.
10. Defendant informed of proceedings
11 Defendant may show cause against judgment.
12. Judgment rendered.
13. Court may hear further evidence.
14. Testimony, how presented
15. Other evidence prohibited.
16. Judgment on two offenses.
17. Fine and imprisonment.
18. Fine constitutes a lien.
19. Papers filed by the clerk.

Execution.

SECTION.
20. Copy of judgment furnished to officer.
21. Execution to issue on fine.
22. When for imprisonment.
23. When for imprisonment or fine.
24. When for imprisonment in Territorial prison.
25. Authority of officer while conveying prisoner
26. Proceedings on judgment of death.
27. Duty of judge in such case
28. Governor may require opinion of supreme judges.
29. Governor only can reprieve.
30. When defendant becomes insane.
31. Inquisition to try insanity.
32. Return of certificate of inquisition.
33. Duty of sheriff on the finding.
34. When finding insane, duty of sheriff.
35 Judgment of death against pregnant woman.
36. Duty of sheriff on finding,
37. Governer to order execution.
38. Duty of court when judgment is not executed.
39. Same, inquiry by court.
40. Death produced, how.
41. Death, when executed.
42. Who may be present at execution.
43. Return of the execution.
44. Sheriff to file certificate.

Court appoints time for judgment,

(5709) § **1**. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment.

Time must be two days from verdict.

(5710) § **2**. The time appointed must be at least two days after the verdict, if the court intend to remain in session so long; or, if not, at as remote a time as can reasonably be allowed.

Defendant absent in case of misdemeanor.

(5711) § **3**. For the purpose of judgment, if the conviction is for a misdemeanor, judgment may be pronounced in his absence.

Officer to produce prisoner,

(5712) § **4**. When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so accordingly.

Bench warrant, when defendant on bail.

(5713) § **5**. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal attendance is necessary; the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the clerk to issue a bench warrant for his arrest.

Clerk to issue warrant.

(5714 § **6**. The clerk, on the application of the county attorney, may, accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Form of warrant.

(5715) § **7**. The bench warrant must be substantially in the following form:

TERRITORY OF OKLAHOMA. } ss.
COUNTY OF..... }

To any sheriff, constable, marshal or policeman in this Territory:

A B having been, on the.....day of..... A. D., 18...., duly convicted in the district court of the county of..... of the crime of (designating it generally), you are therefore commanded forthwith to arrest the above named A B and bring him before that court for judgment, or if the court has adjourned for the term, you are to deliver him into the custody of the sheriff of the county of.....(as the case may be).

Given under my hand, with the seal of said court affixed, this .....day of....., A. D., 18....

By order of the court.

[SEAL] E. F., Clerk.

Warrant served, how.

(5716) § **8**. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county, it need not be indorsed by a magistrate of that county.

Disposal of defendant.

(5717) § **9**. Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

Defendant informed of proceedings.

(5718) § **10**. When the defendant appears for judgment, he must be informed by the court, or by the clerk under its direction, of the nature of the indictment, and his plea and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

Defendant may show cause against judgment.

(5719) § **11**. He may show for cause against the judgment:

First. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him to be insane, the question of his insanity must be tried as hereinafter in this chapter provided for. If, upon the trial of that question the jury find that he is sane, judgment must be pronounced, but if they find him insane he may be committed to the Territorial lunatic asylum, if there be one, until he becomes sane, or be otherwise committed according to law, and when notice is given of that fact, as hereinafter provided for, he must be brought before the court for judgment.

Second That he has good cause to offer, either in arrest of judgment, or for a new trial, in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

Judgment rendered.

(5720) § **12**. If no sufficient cause be alleged or appear to the court why judgment should not be pronounced it must thereupon be rendered.

Court may hear further evidence

(5721) § **13**. After a plea or verdict of guilty in a case where a discretion is conferred upon the court as to the extent of the punishment the court upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment may in its discretion hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

Testimony, how presented.

(5722) § **14**. The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

Other evidence prohibited.

(5723) § **15**. No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court or member thereof in aggravation or mitigation of the punishment, except as provided in the last two sections.

Judgment in two offenses

(5724) § **16**. If the defendant have been convicted of two or more offenses, before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

Fine and imprisonment

(5725) § **17**. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every two dollars of the fine.

Fine constitutes lien.

(5726) § **18**. A judgment that the defendant pay a fine constitutes a lien, also, in like manner as a judgment for money rendered in a civil action.

Papers filed by the clerk.

(5727) § **19**. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and must immediately annex together and file to following papers, which constitute a record of the action.

First. The indictment and a copy of the minutes of the plea or demurrer.

Second. A copy of the minutes of the trial.

Third. The charges given or refused, and the indorsements, if any, thereon; and,

Fourth. A copy of the judgment.

Copy of judgment furnished to officer.

(5728) § **20**. When a judgment, except of death, has been pronounced, a certified copy of the entry thereof, upon the minutes, must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

Execution to issue on fine.

(5729) § **21**. If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil action.

When for imprisonment

(5730) § **22**. If the judgment be imprisonment, or a fine and imprisonment, until such fine be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with.

When for imprisonment or fine.

(5731) § **23**. When the judgment is imprisonment in a county jail, or a fine, and that the defendant be imprisoned until it be paid

the judgment must be executed by the sheriff of the county or subdivision. In all other cases when the sentence is imprisonment, the sheriff of the county must deliver the defendant to the proper officer, in execution of the judgment.

When for imprisonment in territorial prison.

(5732) § **24**. If the judgment is for imprisonment in the Territorial prison, the sheriff of the county or sub-division must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden, superintendent or keeper of the Territorial prison. He must also deliver to the warden or other proper officer a certified copy of the judgment, and take from the warden or other proper officer a receipt for the defendant, and make return thereof to the court.

Authority of officer while conveying prisoner.

(5733) § **25**. The sheriff or his deputy while conveying the defendant to the proper prison in execution of a judgment of imprisonment, has the same authority to require the assistance of any citizen of this Territory in securing the defendant and in retaking him if he escape, as if the sheriff were in his own county, and every person who refuses or neglects to assist the sheriff, when so required, is punishable as if the sheriff were in his own county.

Proceedings on judgment of death.

(5734) § **26**. When judgment of death is rendered, the judge must sign and deliver to the sheriff of the county, a warrant duly attested by the clerk, under the seal of the court, stating the conviction and judgment, and appointing a day on which the judgment is to be executed, which must not be less than thirty nor more than sixty days from the time of the judgment.

Duty of judge in such case.

(5735) § **27**. The judge of a court at which a conviction requiring a judgment of death is had, must, immediately after the conviction, transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Governor may require opinion of Supreme judges.

(5736) § **28**. The Governor may thereupon require the opinion of the judges of the Supreme Court or any of them, upon the statement so furnished.

Governor only can reprieve,

(5737) § **29**. No judge, court or officer other than the Governor can reprieve or suspend the execution of a judgment of death, except the sheriff, in the cases provided in the next seven sections, unless a writ of error is allowed and taken.

When defendant becomes insane.

(5738) § **30**. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the sheriff of the county or subdivision, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of jurors selected or to be selected, forthwith by the county commissioners, a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the district attorney.

Inquisition to try insanity.

(5739) § **31**. The district attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

Return of certificate of inquisition.

(5740) § **32**. A certificate of the inquisition must be signed

by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had.

Duty of sheriff on the finding.

(5741) § **33**. If it is found by the inquisition that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the Governor, or from a majority of the judges of the Supreme Court, directing the execution of the judgment.

When finding insane, duty of sheriff

(5742) § **34**. If the inquisition find that the defendant is insane, the sheriff must immediately transmit to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

Judgment of death against pregnant woman.

(5743) § **35**. When there is good reason to suppose that a female, against whom judgment of death is rendered, is pregnant, the sheriff of the county or subdivision, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians of the Territory to inquire into the supposed pregnancy. Immediate notice thereof must be given to the county attorney. The provisions of sections 5741 and 5742 apply to the proceedings upon the inquisition.

Duty of sheriff on finding

(5744) § **36**. If it is found by the inquisition that the female is not pregnant, the sheriff must execute the judgment. If, however, it is found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the Governor.

Governor to order execution

(5745) § **37**. When the Governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

Duty of court when judgment is not executed.

(5746) § **38**. If, for any reason, a judgment of death has not been executed, and it remains in force, the court in which the conviction was had, on the application of the district attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued.

Same, inquiry by court

(5747) § **39**. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the sheriff of the proper county execute the judgment at a specified time. The sheriff must execute the judgment accordingly.

Death produced, how

(5748) § **40**. The punishment of death must be inflicted by hanging the defendant by the neck until he is dead, or his life may, under the direction of the Governor, and at the costs of the Territory, be taken by electricity if the court so orders.

Death, when executed

(5749) § **41**. A judgment of death must be executed within the walls or yard of a jail of the county in which the conviction was had, or some convenient private place in the county. If there is no such jail or prison in the county in which the conviction was had, or if it becomes unfit or unsafe for the confinement of prisoners, or is destroyed by fire or otherwise, and the jail of another county has been legally designated for the confinement of the prisoners of the county in which the conviction was had, the judgment must be executed in manner as above.

Who may be present at execution

(5750) § **42**. The sheriff or deputy sheriff of the county

must be present at the execution and must invite the presence by at least three days notice of the district attorney, together with one physician and twelve reputable citizens, to be selected by him. He must, also, at the request of the defendant, permit any minister or ministers of the Gospel whom the defendant may name, and any of his relatives or friends, not to exceed five, to attend the execution, and also such peace officers as the sheriff or under sheriff may deem proper. But no person other than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

Return of execution

(5751) § **43**. The sheriff or deputy sheriff must prepare and sign with their names of office a certificate attached to the death warrant setting forth the time, manner and place of the execution, and that the judgment was executed upon the defendant according to the provisions of the last three sections, and attested by at least twelve persons not relatives of the defendant who witnessed the execution.

Sheriff to file certificate

(5752) § **44**. The sheriff or deputy sheriff must cause the certificate to be filed in the office of the clerk of the court.

ARTICLE 16.—WRIT OF ERROR, APPEAL TO SUPREME COURT.

SECTION.
1. Defendant may appeal to Supreme Court.
2. Appeal
3. Territory may appeal to Supreme Court.
4 Time in which appeal must be taken.
5. How appeal is taken.
6 Appeal by Territory not to affect judgment for defendant, until reversal.
7. Defendant's right to bail and appeal, when,
8. Duty of clerk when Territory appeals
9. An appeal shall stand for trial, when.
10. Defendants may appeal jointly or severally.
11. Appellate court, powers of.
12. Duties of Supreme Court in cases of reversal.
13. Court must give judgment on appeal.
14 Appeal not dismissed on informalities.
15. Judgment of affirmance, executed.
16. Supreme Court opinions in writing.

Defendant may appeal to Supreme Court.

(5753) § **1**. An appeal to the Supreme Court may be taken by the defendant, as a matter of right from any judgment against him; and upon the appeal, any decision of the court, or intermediate order made in the progess of the case, may be reviewed.

Appeal.

(5754) § **2**. An appeal from a judgment in a criminal action may be taken in the manner and in the cases prescribed in this section [article].

Territory may appeal to Supreme Court

(5755) § **3** Appeals to the Supreme Court may be taken by the Territory in the following cases and no other:

First. Upon the judgment for the defendant on quashing or setting aside an indictment or information.

Second. Upon an order of the court arresting the judgment.

Third. Upon a question reserved by the Territory.

Time in which appeal must be taken.

(5756) § **4**. The appeal must be taken within one year after the judgment is rendered, and the transcript must be filed as hereinafter directed.

How appeal is taken,

(5757) § **5**. An appeal is taken by the service of a notice upon the clerk of the court where judgment was entered, stating that the appellant appeals from the judgment. If taken by the defend-

ant, a similar notice must be served upon the prosecuting attorney. If taken by the Territory, a similar notice must be served upon the defendant, if he can be found in the county; if not there, by posting up a notice three weeks in the office of the clerk of the district court.

Appeal by Territory not to effect judgment for defendant nntil reversal

(5758) § **6**. An appeal, taken by the Territory, in no case stay or affects the operation of the judgment in favor of the defendant, until the judgment is reversed.

Defendants right to bail and appeal, when.

(5759) § **7**. If the crime of which the defendant is convicted, be a bailable one; the court shall at the time of entering judgment, notify the defendant of his right to an appeal and fix the amount of his bail bond. If an appeal is taken and the bond so fixed is given by the defendant, conditioned, that the defendant will appear, submit to and perform any judgment rendered by the Supreme or district court in the further progress of the cause, and not depart without leave of the court, to be approved by the clerk of the district court, the execution of judgment shall be stayed until affirmed or reversed, or modified by the Supreme Court. If no bond be given the appeal shall not stay the execution of the judgment. If pending the appeal the bond be given, the further execution of the judgment shall be stayed, and the defendant if incarcerated shall be released. In cases where the sentence is for a crime not bailable, the appeal shall suspend execution, until the matter is determined by the Supreme Court, and the defendant in the mean time shall be confined in the Territorial prison. When the appeal is taken the appellant shall within sixty days thereafter, prepare and serve upon the opposite party or his attorney, an abstract of the record of the cause, setting forth so much thereof as he may deem necessary to clearly present the errors complained of, and shall accompany it by an assignment of error, and shall file in the office of the clerk of the Supreme Court seven printed or type-written copies thereof, and the clerk of that court shall then docket the cause, plaintiff and defendant, as it stood in the court below. Within thirty days thereafter if the attorney for the appellee, deem the abstract so filed, insufficient, incomplete or incorrect, he may serve upon the opposite counsel, and file in the Supreme Court, an additional or supplemental abstract, amending, adding to, or denying, in whole or in part, the abstract so filed by the appellant. Within ten days thereafter, the appellant may prepare and serve upon the attorney for the appellee. a denial of the supplemental abstract so filed, and shall within thirty days file such denial, accompanied by a certified transcript of the record in the cause, in the office of the clerk of the Supreme Court. If the abstract filed by the appellant, be not denied it shall be deemed correct, and the cause shall be heard and determined thereon. If there be a supplemental abstract filed and not denied, then the record shall be deemed to be as stated by such supplemental abstract, and the cause shall be tried and determined in the Supreme Court on the record so stated. If there be a denial of the supplemental abstract then the cause shall be tried on the transcript of the record. If an appeal be taken more than sixty days before the term of the Supreme Court, and the party appealing has

failed to certify, and file his abstract as required in this section, the defendant may, if the appeal be by the Territory, and the Territory must, if the appeal be by the defendant, file in such court a certified copy of the judgment entry below, and thereupon the Supreme Court shall, unless good cause for a continuance be shown, affirm the judgment below, and order its execution. Abstracts, briefs and argument shall be in such form, and filed, as the Supreme Court may by rule direct.

Duty of clerk when territory appeals.

(5760) § **8**. In case of an appeal from a question reserved on the part of the Territory it is not necessary for the clerk of the court below to certify in the transcript any part of the proceedings and record except the bill of exceptions and the judgment of acquital. When the question reserved is defectively stated the Supreme Court may direct any other part of the proceedings and record to be certified to them.

An appeal shall stand for trial when.

(5761) § **9**. An appeal shall stand for trial immediately after filing the transcript if the Supreme Court is in session, if not in session, at the next term thereafter on proof of notice of appeal to the appellee.

Defendants may appeal jointly or severally.

(5762) § **10**. When several defendants are tried jointly, any one or more of them may take an appeal, but those who do not join in the appeal shall not be affected thereby.

Appellate court, powers of.

(5763) § **11**. The appellate court may reverse, affirm or modify the judgment appealed from, and may, if necessary or proper, order a new trial. In either case, the cause must be remanded to the court below, with proper instructions, and the opinion of the court, within the time, and in the manner, to be prescribed by rule of the court.

Duty of Supreme Court in cases reversed.

(5764) § **12**. When a judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the Supreme Court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense, although defectively charged in the indictment, the Supreme Court must direct the prisoner to be returned and delivered over to the jailor of the proper county, there to abide the order of the court in which he was convicted.

Court must give judgment on an appeal.

(5765) § **13**. On an appeal, the court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties.

Appeal not dismissed for informalities.

(5766) § **14**. An appeal shall not be dismissed for any informality or defect in the taking thereof. If the same be corrected in a reasonable time after an appeal has been dismissed, another appeal may be taken.

Judgment of affirmance executed

(5767) § **15**. On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court may direct.

Supreme court opinions, in writing.

(5768) § **16**. All opinions of the Supreme Court in criminal prosecutions, must be given in writing and recorded in the journal.

Chap. 72. ARTICLE 17.—COMPELLING THE ATTENDANCE OF WITNESSES.

SECTION.
1 Subpoena defined.
2. Magistrate may issue subpoena.
3. District attorney may issue subpoena for grand jury.
4. Same, for trial.
5. Clerk to issue for defendant.
6. Form of subpoena.
7. Subpoena *duces tecum*.
8. Subpoena served by whom.
9. How served
10. Expenses of witnesses.
11. Payment of witnesses, expenses.
12. When witness resides out of county.
13. Disobedience to subpoena.
14. When witness for defendant disobeys subpoena.

Subpoena defined

(5769) § **1**. The process by which the attendance of a witness before a court or magistrate is required, is a subpœna.

Magistrate may issue subpoena

(5770) § **2**. A magistrate before whom an information is laid, or to whom a presentment of a grand jury is sent, may issue subpœnas, subscribed by him, for witnesses within the Territory. either on behalf of the Territory or of the defendant.

District attorney may issue subpoena for grand jury

(5771) § **3**. The district attorney may issue subpœnas, subscribed by him, for witnesses within the Territory, in support of the prosecution, or for such other witnesses as the grand jury may direct, to appear before the grand jury upon an investigation before them.

Same for trial

(5772) § **4**. The district attorney may in like manner issue subpœnas for witnesses within the Territory, in support of an indictment, to appear before the court at which it is to be tried.

Clerk to issue for defendant,

(5773) § **5**. The clerk of the court at which an indictment is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, under the seal of the court and subscribed by him as clerk, for witnesses within the Territory, as may be required by the defendant.

Form of subpoena

(5774) § **6**. A subpœna, authorized by the last four sections, must be substantially in the following form:

IN THE NAME OF THE TERRITORY OF OKLAHOMA.

To A B:

You are commanded to appear before C D, a justice of the peace at the town of ....., (or the grand jury of the county of ....., or "the district court ....." (or as the case may be), on (stating the day and hour), as a witness in a criminal action prosecuted by the Territory of Oklahoma against E. F.

Dated at the town of ...., (as the case may be), the ..... day of ....., 18....

G H, justice of the peace," or "I K, district attorney," or "by order of the court, L M, clerk," (as the case may be).

Subpoena duces tecum

(5775) § **7**. If the books, papers or documents be required, a direction to the following effect must be contained in the subpœna.

And you are required also to bring with you the following: (Describe intelligently the books, papers or documents required.)

Subpoena served by whom

(5776) § **8**. A peace officer must serve in his county, city, town or village, as the case may be, any subpœena delivered to him for service, either on part of the Territory or of the defend-

ant, and must make a written return of the service, subscribed by him stating the time and place of service without delay. A subpœna may, however, be served by any other person.

How served.

(5777) § **9**. A subpœna is served by delivering it, or by showing it, and delivering a copy thereof to the witnesses personally.

Expenses of witnesses.

(5778) § **10**. When a person attends before a magistrate, grand jury or court as a witness on behalf of the Territory upon a subpœna, or pursuant to an undertaking and it appears that he has come from a place out of the county, or that he is poor, the court if the attendance of a witness be upon a trial, by an order entered upon its minutes, or in any other case, the district judge, by a written order, may direct the county treasurer to pay the witness a reasonable sum to be specified in the order for his expenses.

Payment of witnesses' expenses.

(5779) § **11**, Upon the production of the order, or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury.

When witness resides out of county.

(5780) § **12**. No person is obliged to attend as a witness, before a court or magistrate out of the county where the witness resides or is served with the subpœna, unless the judge of the court in which the offense is triable, upon an affidavit of the prosecutor or district attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness [is] material, and his attendance at the examination of trial necessary, shall indorse on the subpœna an order for the attendance of the witness.

Disobedience to subpoena.

(5781) § **13**. Disobedience to a subpœna, or a refusal to be sworn or to testify, may be punished by the court or magistrate, as for a criminal contempt, in the manner provided in civil procedure.

When witness for defendant disobeys subpoena

(5782) § **14**. A witness disobeying a subpœna issued on the part of the defendant, also forfeits to the defendant the sum of fifty dollars, which may be recovered in a civil action.

ARTICLE 18.—DEPOSITIONS IN CRIMINAL ACTIONS.

Taken Within the Territory

SECTION.
1 Right of defendant.
2 In case of sick witness.
3 Conditional examination of witness.
4 Application made, when
5 Court to issue order for examination
6 Order must direct, what
SECTION
7. When examination shall not proceed.
8. Attendance of witness, enforced how
9. Testimony must be written and authenticated.
10 Deposition read in evidence, when
11. Witness a prisoner

Taken Without the Territory.

SECTION.
12 Witness not in the Territory.
13 Commission to take testimony.
14 Application made on affidavit
15 Five days notice
16 Court to make order.
17 Interrogatories to be served
18 Court to direct the manner of return
19 Commission to be executed, how
SECTION.
20. When commission delivered to an agent.
21. Agent incapacitated
22. Commission and return to be filed.
23. Commission and returns, public records.
24. Depositions may be read on trial

Right of defendant.

(5783) § **1**. When a defendant has been held to answer a charge for a public offense, he may either before or after indictment or information, have witnesses examined conditionally on his behalf as prescribed in this chapter, and not otherwise.

In case of sick witness

(5784) § **2**. When a material witness for the defendant is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Affidavit for conditional examination of witnesses

(5785) § **3**. The application must be made upon affidavit, stating:

First. The nature of the offense charged.

Second. The state of the proceedings in the action.

Third. The name and residence of the witness, and that his testimony is material to the defense of the action.

Fourth. That the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

Application made, when.

(5786) § **4**. The application may be made to the court or to a judge thereof, and must be made upon five days notice to the district attorney.

Court to issue order for examination.

(5787) § **5**. If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on the district attorney within a specified time before that fixed for the examination.

Order must direct what

(5788) § **6**. The order must direct that the examination be taken before a magistrate named therein; and on proof being furnished to such magistrate, of service upon the district attorney of a copy of the order, if no counsel appear on the part of the the people, examination must proceed.

When examination shall not proceed

(5789) § **7**. If the district attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate by affidavit or other proof, or on the examination of the witness, that he is not about to leave the Territory, or is not sick or infirm, or that the application was made to avoid the examination of the witness on trial, the examination cannot take place; otherwise, it must proceed.

Attendance of witness enforced, how

(5790) § **8**. The attendance of the witness may be enforced by subpœna issued by the magistrate before whom the examination is to be taken, or from the court where the trial is to be had.

Testimony must be written and deposition authenticated.

(5791) § **9**. The testimony given by the witness must be reduced to writing. The magistrate before whom the examination is had may, in his discretion, order the testimony and proceedings to be taken down in short hand, and for that purpose he may appoint a short hand reporter. The deposition or testimony of the witness must be authenticated in the following form:

First. It must state the name of the witness, his place of residence and his business or profession.

Second. It must contain the questions put to the witness and

his answers thereto, each answer being distinctly read to him as it is taken down. and being corrected or added to until it conforms to what he declares is the truth; except in cases where the testimony is taken down in short hand, the answer or answers of the witness need not be read to him.

Third. If a question be objected to on either side and overruled, or the witness declines answering it, that fact with the ground on which the question was overruled, or the answer declined must be stated.

Fourth. The deposition must be signed by the witness, or if he refuses to sign it his reason for refusing must be stated in writing as he gives it; except in cases where the deposition is taken down in short hand, it must not be signed by the witness.

Fifth. It must be signed and certified by the magistrate when reduced to writing by him or under his direction, and when taken down in short hand the manuscript of the reporter, appointed as aforesaid, when written out in long hand writing, and certified as being a correct statement of such testimony and proceedings in the case, shall be *prima facie* a correct statement of such testimony and proceedings. The reporter shall within five days after the close of such examination transcribe into long hand writing his said short hand notes, and certify and deliver the same to the magistrate who shall also certify the same and transmit such testimony and proceedings, carefully sealed up, to the clerk of the court in which the action is pending or may come for trial.

Deposition read in evidence when.

(5792) § **10.** The deposition or certified copy thereof may be read in evidence by either party on the trial upon its appearing that the witness is unable to attend by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the Territory. Upon reading the depositions in evidence the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court.

When witness is a prisoner his evidence may be taken.

(5793) § **11.** When a material witness for a defendant under a criminal charge, is a prisoner in a Territorial prison or in a county jail of a county other than that in which the defendant is to be tried, his deposition may be taken on behalf of the defendant in the manner provided for in the case of a witness who is sick; and the foregoing provisions of this article, so far as they are applicable, govern in the application for, and in the taking and use of such depositions, such deposition may be taken before any magistrate or notary public of the county in which the jail or prison is situated; or in case the witness is confined in a Territorial prison, and the defendant is unable to pay for taking the deposition, before the warden or clerk of the board of directors of the prison, whose duty it shall be to act without compensation. Every officer before whom testimony shall be taken by virtue hereof, shall have authority to administer, and shall administer an oath to the witness, that his testimony shall be the truth, the whole truth and nothing but the truth.

When the witness is not in the territory.

(5794) § **12.** When an issue of fact is joined upon an indictment or information the defendant may have any material witness

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residing out of the Territory examined in his behalf as prescribed in this article and not otherwise.

Application for commission to take testimony.

(5795) § **13**. When a material witness for the defendant resides out of the Territory the defendant may apply for an order that the witness be examined on a commission to be issued under the seal of the court, and the signature of the clerk, directed to some party designated as commissioner, authorizing him to examine the witness upon oath or interrogatories annexed thereto, and to take and certify the deposition of the witness and return it according to the instructions given with the commission.

Application made upon affidavit,

(5796) § **14**. Application must be made upon affidavit stating:

First. The nature of the offense charged.

Second. The state of the proceedings in the action and that an issue of the fact has been joined therein.

Third. The name of the witness and that his testimony is material to the defense of the action.

Fourth. That the witness resides out of the Territory.

Application made on five days' notice.

(5797) § **15**. The application may be made to the court or judge himself, and must be upon five days notice to the district attorney.

Court to make order.

(5798) § **16** If the court or judge to whom the application is made, is satisfied of the truth of the facts stated and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and the court or judge may insert in the order a direction that the trial be stayed for a specified time reasonably sufficient for the execution of the commission and return thereof, or the case may be continued.

Interrogatories to be served.

(5799) § **17**. When the commission is ordered, the defendant must serve upon the district attorney, without delay, a copy of the interrogatories to be annexed thereto, within three days notice of the time at which they will be presented to the court or judge. The district attorney may in like manner serve upon the defendant or his counsel cross interrogatories, to be annexed to the commission, with like notice. In the interrogatories, either party may insert any question pertinent to the issue. When the interrogatories and cross interrogatories are presented to the court or judge, according to the notice, the court or judge must modify the questions, so as to conform them to the rules of evidence, and must indorse upon them his alterations, and annex them to the commission.

Court to direct the manner of return.

(5800) § **18**. Unless the parties otherwise consent by an indorsement upon the commission, the court or judge must indorse thereon the direction and manner in which it must be returned, and may in his discretion direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name, and the place where his office is kept.

Commission to be executed, how.

(5801) § **19**. The commissioner, unless otherwise specially directed, may execute the commission as follows:

First. He must administer an oath to the witness that his

answers given to the interrogatories shall be the truth, the whole truth and nothing but the truth.

Second. He must cause the examination of the witness to be reduced to writing and subscribed by him.

Third. He must write the answers of the witness as nearly as possible in the language in which he gives them, and read to him each answer so taken down, and correct or add to it until it conforms to what he declares is the truth.

Fourth. If the witness declines to answer a question, that fact, with the reason assigned by him for declining, must be stated.

Fifth. If any papers or documents are produced before him, and proved by the witness, they, or copies of them, must be annexed to the deposition, subscribed by the witness, and certified by the commissioner.

Sixth The commissioner must subscribe his name to each sheet of the deposition, with the papers and documents proved by the witness, or copies thereof, to the commissioner, and must close it up under seal, and address it as directed by the indorsement thereon.

Seventh. If there be direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post office. If any other direction be made by the written consent of the parties, or by the court or judge, to the commissioner as to its return, the commissioner must comply with the directions. A copy of this section must be annexed to the commission.

When commission is delivered to an agent.

(5802) § **20**. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the action is pending, by whom it may be received and opened upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it.

When agent is incapacitated

(5803) § **21**. If the agent is dead, or from sickness or other cause is unable personally to deliver the commission and return as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or, from sickness or other casualty, unable to deliver it, and it has not been opened or altered since the person making the affidavit received it, and that he believes it has not been opened or altered since it came from the hands of the commissioner

Commission and return to be filed

(5804) § **22**. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment or information is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post office, and open and file it in his office, where it must remain unless otherwise directed by the court.

Commission and return made public record.

(5805) § **23**. The commission and return must at all times be

open to the inspection of all persons, who must be furnished a copy of the same, or any part thereof, on payment of his fees.

Depositions may be read on trial.

(5806) § **24**. Depositions, taken under a commission, may be read in evidence by either party on the trial upon it being shown that the witness is unable to attend from any cause whatever, and the same objections may be taken to a question in the interrogatories, or to the answers in the deposition, as if the witness had been examined orally in court.

ARTICLE 19.—INQUIRING INTO THE SANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

SECTION.
1. Insane person cannot be tried.
2. When doubt as to sanity arises
3. Trial to be suspended.
4. Order of trial.
5. Charge of the court.
6. If sane, trial to proceed.
7. If insane, judgment suspended.
8. Commitment exonerates bail.
9. Restoration to sanity.
10. Expenses of keeping defendant.

Insane person cannot be tried.

(5807) § **1**. An act done by a person in a state of insanity cannot be punished as a public offense, nor can a person be tried, adjudged to punishment, or punished for a public offense, while he is insane.

When doubt as to sanity arises.

(5808) § **2**. When an indictment is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt arise as to the sanity of the defendant, the court must order a jury to be impanelled from the jurors summoned and returned for the term, or who may be summoned by direction of the court, to inquire into the fact.

Trial to be surpended.

(5809) § **3**. The trial of the indictment or the pronouncing the judgment, as the case may be, must be suspended until the question of insanity is determined by the verdict of the jury.

Order of trial.

(5810) § **4**. The trial of the question of insanity must proceed in the following order:

First. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity.

Second. The counsel for the Territory may then open their case and offer evidence in support thereof.

Third. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

Fourth. When the evidence is concluded, unless the case be submitted to the jury on either side or on both sides, without argument, the counsel for the Territory must commence, and the defendant or his counsel may conclude, the argument to the jury.

Fifth. If the indictment be for an offense punishable with death two counsels on each side may argue the cause to the jury, in which case they must do so alternately. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

Sixth. The court must then charge the jury before argument as in other cases.

Charge of the court.

(5811) § **5**. The provisions of the chapter on trials, in respect

to the duty of the court upon questions of law, and of the jury upon questions of fact, and the provisions in respect to the charge of the court to the jury, upon the trial of an indictment or information. apply to the questions of insanity.

(5812) § **6**. If the jury find the defendant sane, the trial of the indictment must proceed, or judgment may be pronounced, as the case may be,

If insane, judgment suspended.

(5813) § **7**. If the jury find the defendant is insane, the trial or judgment must be suspended until he becomes sane, and the court, if it deem his dischage dangerous to the public peace or safety, may order that he be, in the meantime, committed to the care of the sheriff until he becomes sane.

Commitment exonerates bail.

(5814) § **8**. The commitment of the defendant as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant to return of money he may have deposited instead of bail.

Restoration to sanity.

(5815) § **9**. When he becomes sane the sheriff must thereupon, without delay, place him in the proper custody until he be brought to trial or judgment, as the case may be, or be legally discharged.

Expenses of keeping defendant.

(5816) § **10**. The expenses of keeping the defendant are in the first instance chargeable to the county, but the county may recover them from the estate of the defendant, if he have any, or from a relative.

ARTICLE 20.—SEARCH WARRANTS.

SECTION.

1. Search warrant defined.
2. Grounds for issue of search warrant.
3. Must have probable cause
4. Sworn complaint must be made.
5. Requisite of the warrant.
6. Form of the warrant.
7. Search warrant served by whom
8. Officer may break open door.
9. Same, for liberating persons.
10. Warrant served at night, when.
11. Warrant void after ten days.
12. Property disposed of, how.
13. Return of the warrant.
14. Copy of inventory.
15. Complaint controverted.
16. Testimony how taken.
17. Property to be restored.
18. Depositions returned to district court.
19. Procuring search warrant without cause.
20. Officer exceeding his authority.
21. Searching defendant by magistrate.

Search warrant defined.

(5817) § **1**. A search warrant is an order in writing, in the name of the Territory, signed by a magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the magistrate.

Grounds for issue of search warrant.

(5818) § **2**. It may be issued upon either of the following grounds:

First. When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

Second. When it was used as the means of committing a felony, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be.

Third. When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered, in which case it may be taken on the warrant from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

Must have probable cause.

(5819) § **3**. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

Sworn complaint must be made.

(5820) § **4**. The magistrate must, before issuing the warrant, take, on oath, the complaint of the prosecuting witness in writing, which must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

Requisites of the warrant.

(5821) § **5**. If the magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law.

Form of the warrant.

(5822) § **6**. The warrant must be in substantially the following form:

County of .....

In the name of the Territory of Oklahoma: To any sheriff, constable, marshal or policeman in the county of .....

Proof by affidavit having been this day made before me, by (naming every person whose affidavit has been taken) the (stating the particular grounds of the application according to the second section of this chapter, or if the affidavit be not positive) that there is probable cause for believing that (stating the grounds of the application in the same manner).

You are therefore commanded, in the day time, (or "at any time of the day or night," as the case may be, according to the fourth following section) to make immediate search on the person of C. D. (or "in the house situated," describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity), and if you find the same, or any part thereof, to bring it forthwith before me, at (stating the place).

Dated at.....: the.....day of....., 18....

E. F., Justice of the peace of the city (or town) of (or as the case may be).

Search warrant served by whom

(5823) § **7**. A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer, on his requiring it, he being present, and acting in its execution.

Officer may break open door

(5824) § **8**. The officer may break open an outer or inner door

or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of his authority and purpose he be refused admittance.

Same for liberating person.

(5825) § **9**. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

Warrant may be served at night, when.

(5826) § **10**. The magistrate must insert a direction in the warrant that it be served in the day time, unless the affidavits be positive that the property is on the person, or in the place to be searched. In which case he may insert a direction that it be served at any time of the day or night.

Search warrant void after ten days.

(5827) § **11**. A search warrant must be executed and returned to the magistrate by whom it wass issued within ten days. After the expiration of these times respectively, the warrant, unless executed, is void.

Property disposed of how.

(5828) § **12**. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, deliver it to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of the second section of this chapter, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken, is triable.

Return of the warrant.

(5829) § **13**. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly, or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the magistrate, to the following effect.

I, A B, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

Copy of inventory.

(5830) § **14**. The magistrate must thereupon. if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

Complaint controverted

(5831) § **15**. If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

Testimony, how taken

(5832) § **16**. The testimony given by each witness must be reduced to writing and authenticated in the manner as in preliminary examinations.

Property to be restored.

(5833) § **17**. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

Depositions returned to district court.

(5834) § **18**. The magistrate must annex together the depositions, the search warrant and return, and the inventory, and then return them to the next district court of the county having power

to inquire into the offense in respect to which the search warrant was issued by the intervention of a grand jury at or before its opening on the first day.

Procuring search warrant without cause.

(5835) § **19**. A person who maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a misdemeanor.

Officer exceeding his authority.

(5836) § **20**. A peace officer in executing a search warrant, who wilfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

Searching defendant by magistrate.

(5837) § **21**. When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

ARTICLE 21.—PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

SECTION.
1. Governor may offer reward for criminal.
2. Delivery of criminals on requisition.
3. Magistrate to issue warrant.
4. Proceedings for arrest and commitment.
5. Persons charged may be committed for a reasonable time.
6. Admission to bail.
7. Notice to district attorney.
8. Duty of district attorney.
9. Person discharged, when.
10. Magistrate to make return of proceedings.
11. Fugitive granted twenty-four hours.
12. Penalty for unlawful delivery of fugitive.
13. Expenses of foreign arrests
14. No compensation allowed.
15. Violation a misdemeanor.

Governor may offer reward for criminal

(5838) § **1**. The Governor may offer a reward not exceeding one thousand dollars, payable out of the Territorial treasury, for the apprehension.

First. Of any convict who has escaped from the Territoral prison; or,

Second. Of any person who has committed, or is charged with the commission of an offense, punishable with death.

Delivery of criminals on requisition

(5839) § **2**. A person charged in any state or territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this Territory, must, on demand of the executive authority of the state or territory from which he fled be delivered up by the Governor of this Territory, to be removed to the state or territory having jurisdiction of the crime.

Magistrate to issue warrant

(5840) § **3**. A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found within this Territory.

Proceedings for arrest and commitment

(5841) § **4**. The proceedings for the arrest and commitment of a person charged, are in all respects similar to those provided in this chapter for the arrest and commitment of a person charged with a public offense committed in this Territory. Except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the state or territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

(5842) § **5.** If, from the examination, it appear that the person charged has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody for a time, specified in the warrant; which the magistrate deems reasonable, to enable the arrest of the fugitive, under the warrant of the executive of this Territory, on the requsition of the executive authority of the state or territory in which he committed the offense unless he give bail, as provided in the next section, or until he be legally discharged.

Person charged may be committed for a reasonable time

(5843) § **6.** The magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearence before him at a time specified in the undertaking, and for his surrender, to be arrested upon the warrant of the Governor of this Territory.

Admission to bail

(5844) § **7.** Immediately upon the arrest of the person charged, the magistrate must give notice to the district attorney.

Notice to district attorney.

(5845) § **8.** The district attorney must, immediately thereafter, give notice to the executive authority of the state or territory, or the prosecuting attorney or the presiding judge of the criminal court of the city or county therein, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged

Duty of the district attorney

(5846) § **9** The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking he be arrested under the warrant of the Governor of this Territory.

Person discharged, when.

(5847) § **10.** The magistrate must return his proceedings to the next district court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time for his arrest have not elapsed, it may discharge him from detention, or may order his undertaking of bail to be cancelled, or continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

Magistrate to make a return o proceedings.

(5848) § **11.** Any person who is arrested within this Territory, by virtue of a warrant issued by the Governor of this Territory, upon a requisition of the governor of any other state or territory, as a fugitive from justice under the laws of the United States, shall not be delivered to the agent of such state or territory until notified of of the demand made for his surrender, and given twenty-four hours to make demand for counsel; and should such demand be made for the purpose of suing out a writ of *habeas corpus* the prisoner shall be forthwith taken to the nearest judge of the district court, and ample time given to sue out such writ, such time to be determined by the said judge of the district court.

Fugitive granted twenty-four hours

(5849) § **12.** Any officer who shall deliver such person to such agent for extradition without first having complied with the provisions of the preceding section shall be deemed guilty of a misdemeanor.

Penalty for unlawful delivery of fugitive.

(5850) § **13.** When the Governor shall demand from the executive authority of a state or territory of the United States, or of

Expenses of foreign arrests.

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a foreign government, the surrender to the authorities of this Territory, of a fugitive from justice, the accounts of the persons employed by him for that purpose must be paid out of the Territorial treasury.

No compensation allowed.

(5851) § **14**. No compensation, fee, or reward of any kind, can be paid to, or received by a public officer of this Territory, for a service rendered or expense incurred in procuring from the Governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this Territory, or detaining him herein, except as provided in the last section.

Violation a misdemeanor.

(5852) § **15**. A violation of the last section is a misdemeanor.

ARTICLE 22.—DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT.

SECTION.
1. Person discharged when no indictment found.
2. When not brought to trial.
3. Court may order a continuance
4. Action dismissed, effect of.
5. Reasons for dismissal set forth in order.
6. *Nolle prosequi* abolished.
7. Dismissal not a bar to another presentment.

Person discharged when no indictment found

(5853) § **1**. When a person has been held to answer for a public offense, if an indictment is not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

When not brought to trial.

(5854) § **2**. If a defendant, prosecuted for a public offense, whose trial has not been postponed upon his application, is not brought to trial at the next term of court in which the indictment is triable after it is found, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

Court may order continuance

(5855) § **3**. If the defendant is not prosecuted or tried, as provided in the last two sections, and sufficient reason therefor is shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

Action dismissed effect of.

(5856) § **4**. If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated. or money deposited instead of bail must be refunded to him.

Reasons for dismissal set forth in order.

(5857) § **5**. The court may either of its own motion or upon the application of the district attorney, and the furtherance of justice, order an action or indictment to be dismissed; but in that case the reasons of the dismissal must be set forth in the order, which must be entered upon the minutes.

Nolle prosequi abolished

(5858) § **6**. The entry of a *nolle prosequi* is abolished, and the district attorney cannot discontinue or abandon a prosecution for a public offense, except as provided in the last section.

Dismissal not a bar to another prosecution

(5859) § **7**. An order for the dismissal of the action, as provided in this chapter, is not a bar to any other prosecution for the same offense.

ARTICLE 23.—PRISONS AND IMPRISONMENT. Chap. 72.

SECTION.
1. Common jail used as a prison, when
2 When no jail in the county.
3 County commissioners inspectors of prisons
4 No liquor shall be allowed to prisoners.
5. Penalty for violation, sexes kept separately.
6, Penalty for other persons giving liquor to prisoner.
7. Prisoner shall be kept cleanly.
8 Bible for each prisoner
9. Sheriff to keep calendar of prisoners committed.
10 Sheriff to furnish court with copy of calendar.
11. Jails shall be constructed, how.
12. Imprisonment at hard labor.
13 Court may sentence to hard labor.
14 When marshal shall superintend labor.
15. Officer may punish convicts for cause.
16. Convicts given credit for labor.
17 Penalty for cruelty to convict.
18 Penalty for annoying convict.
19 Punishment of convict for disorderly conduct

SECTION.
20. Punishment for escaping from prison.
21. Same, person not convicted.
22. Same, committed for capital offense.
23. Prisoners in case of fire
24. Poor convict held for fine and costs.
25. United States prisoners.
26. United States liable for expense of keeping United States prisoners.
27 Calendar of United States prisoners to be sent to court.
28. Prisons established in every county.
29. Grand jury shall examine county prisons.
30. Sheriff or deputy to keep the jail.
31 Keeping of prisoner to be paid for by county.
32. Authority of sheriff.
33 Commitments filed by sheriff.
34. Commitments to be delivered to successor.
35. Prisoner sent to jail in another county.
36. Fugitives kept in another county jail.
37. Juvenile prisoners.

(5860) § **1**. The common jails now erected, or which shall hereafter be erected, in the several counties in the charge of the respective sheriffs, shall be used as prisons: Common jails used as prisons, when.

First. For the detention of persons charged with offenses, and duly committed for trial.

Second. For the detention of persons who may be duly committed, to secure their attendance as witnesses on the trial of any criminal cause.

Third. For the confinement of persons pursuant to a sentence, upon a conviction for an offense, and of all other persons duly committed for any cause authorized by law.

Fourth. For the confinement of persons who may be sentenced to imprisonment in the Territorial prison, until a suitable prison shall be provided.

(5861) § **2**. Whenever there is no jail erected in any county, every judicial or executive officer of such county who shall have power to order, sentence, or deliver any person to the county jail, may order, sentence or deliver such person to the jail of any adjoining county; and if there is no jail erected in any adjoining county, then to either of the forts or garrisons in the Territory, with the consent of the commanding officer of the same; and the jailer of any such adjoining county shall receive and keep such prisoner in the same manner as if he had been ordered, sentenced, or delivered to him by any officer or court of his own county. The county from which such prisoner was taken shall pay all the expenses of keeping and maintaining him in said jail. When there is no jail in the county.

(5862) § **3**. The county commissioners in the several counties shall be inspectors of the prisons in their respective counties, and shall visit them at least once in each year, and shall examine fully County commissioners are inspectors of prisons.

into the condition of such prison, as to health, cleanliness and discipline; and the keeper thereof shall lay before them a calendar setting forth the name, age and cause of committal of each prisoner; and if it shall appear to the said inspectors that any of the provisions of law have been violated or neglected, they shall forthwith give notice to the district attorney of the county.

No liquor shall be allowed to prisoners

(5863) § **4**. No sheriff, jailer, or keeper of any prison, shall, under any pretense, give, sell or deliver to any person committed to any prison, for any cause whatever, any spirituous liquor, or any mixed liquor, part of which is spirituous, or any wine, cider, or strong beer, unless a physician shall certify in writing that the health of such prisoner requires it, in which case he may be allowed the quantity prescribed, and no more. And no sheriff, jailer, or keeper, as aforesaid, shall put up, or keep in the same room, male and female prisoners together.

Penalty for violation, sexes kept separate

(5864) § **5**. If any sheriff, jailer, or keeper of any prison, shall sell or deliver to any prisoner in his custody, or shall willingly or negligently suffer any such prisoner to have any liquor prohibited in the preceding section of this chapter, or shall place or keep together prisoners of different sexes contrary to the provisions of the said preceding section he shall in each case forfeit and pay for the first offense the sum of twenty-five dollars, and such officer shall on a second conviction be further sentenced to be incapable of holding the office of sheriff, deputy sheriff, jailer, or keeper of any prison, for the term of five years.

Penalty for other person delivering liquor to prisoner.

(5865) § **6**. If any person, other than is mentioned in the preceding section, shall sell or deliver to any person committed for any cause whatever, any liquor prohibited in this chapter, or shall have in his possession, in the precincts of any prison, any such liquor, with intent to carry or deliver the same to any prisoner confined therein, he shall be punished by fine not exceeding fifteen dollars.

Prison shall be kept cleanly.

(5866) § **7**. The keeper of such prison shall see that the same is constantly keep in a cleanly and healthful condition, and shall see that strict attention is constantly paid in the personal cleanliness of all the prisoners in his custody, as far as may be, and shall cause the shirt of each prisoner to be washed at least once in each week; each prisoner shall be furnished daily with as much clean water as he shall have occasion for, either for drink or for the purpose of personal cleanliness, and with a clean towel once a week, and shall be served three times each day with wholesome food, which shall be well cooked and in sufficient quantity.

A bible shall be furnished for each prisoner.

(5867) § **8**. The keeper of each prison shall provide, at the expense of the county, for each prisoner under his charge, who may be able and desirous to read, a copy of the Bible, or New Testament, to be used by such prisoner at proper seasons during his confinement, and any minister of the gospel, disposed to aid in reforming the prisoners, and instructing them in their moral and religious duties, shall have access to them at seasonable and proper times.

Sheriff to keep a calendar of all persons committed to prison

(5868) § **9**. The sheriffs of the respective counties shall keep

a true and exact calendar or register of all persons committed to any prison under their care, and the same shall be kept in a book, to be provided by the county for that purpose; said calendar shall contain the names of all persons who shall be committed to prison, the places of abode, the time of their commitment, shall state the cause of their commitment, and the authority that committed them, and if they are committed for criminal offenses shall contain a description of their persons, and when any prisoner shall be liberated, said calendar shall state the time when and, and the authority by which such liberation took place, and if any prisoner escapes, shall also state particularly the time and manner of said escape.

Sheriff shall furnish court with a copy of calendar.

(5869) § **10**. At the opening of each session of the district court, within his county, the sheriff shall return a copy of said calendar under his hand, to the judge holding said court, and if any sheriff shall neglect or refuse so to do, he shall be punished by fine not exceeding three hundred dollars.

Jails shall be constructed, how.

(5870) § **11**. In the jails erected, or which shall be hereafter erected in this Territory, there shall be provided sufficient and convenient apartments for confining prisoners not criminal, separate from felons and other criminals, and also for confining persons of different sexes, separate and apart from each other.

Imprisonment at hard labor.

(5871) § **12**. Whenever any person shall be confined in any jail pursuant to the sentence of any court, if such sentence or any part thereof shall be that he be confined at hard labor, the sheriff of the county in which such person shall be confined shall furnish such convict with suitable tools and materials to work with, if, in the opinion of the said sheriff, the said convict can be profitably employed either in the jail or yard thereof, and the expense of said tools and materials shall be defrayed by the county in which said convict shall be confined, and said county shall be entitled to his earnings. And the said sheriff, if in his opinion the said convict can be more profitably employed outside of said jail or yard, either for the county or for any municipality in said county, it shall be his duty to so employ said convict either in work on public streets or highways or otherwise, and in so doing he shall take all necessary precaution to prevent said convict's escape, by ball and chain or otherwise, and fifty per cent of the profits of such employment, after paying all expenses incident thereto, may be retained by said sheriff as his fees therefor, the balance to be paid into the treasury of the proper county to the credit of the general fund; and when a convict is imprisoned in the county jail for nonpayment of a fine he may be employed by said sheriff as provided in this chapter; and in case any convict employed outside of the jail yard shall escape, he shall be deemed as having escaped from the jail proper.

Court may sentence to hard labor.

(5872) § **13**. Any court, justice of the peace, police court or police magistrate, in cases where such courts have jurisdiction under the laws of this Territory, or as provided by the ordinances or charter of any incorporated town or city in the Territory, shall

have full power and authority to sentence such convict to hard labor as provided in this chapter.

When the marshal shall superintend labor.

(5873) § **14.** When the imprisonment is pursuant to the judgment of any court, police court, police magistrate of an incorporated city or town for the violation of any ordinance, by-law, or other regulation, the marshal shall superintend the performance of the labor herein contemplated, and shall furnish the tools and materials, if necessary, at the expense of the city or town requiring the labor, and such city or town shall be entitled to the earnings of its convicts.

Officer may punish convict for cause

(5874) § **15.** The officer having charge of any convict for the purpose specified in this chapter may use such means as, and no more than are necessary to prevent escape, and if any convict attempt to escape either while going from or returning to the jail, or while at labor, or at any time, or if he refuses to labor, the officer having him in charge, after due inquiry, may, to secure such person or to cause him to labor, use the means authorized to be used in reference to refractory and disorderly prisoners: *Provided*, Such punishment shall all be inflicted within the jail or jail inclosure for refusing to work, and shall not be considered as any part of the time for which the prisoner is sentenced.

Convicts shall be given credit for labor,

(5875) § **16.** For every day's labor performed by any convict under the provisions hereof there shall be credited on any judgment for fine and costs against him the sum of two dollars.

Penalty for cruelty to convict

(5876) § **17.** If any officer or other person treat any prisoner in a cruel or inhuman manner he shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment.

Penalty for annoying convict.

(5877) § **18.** The officer having such prisoner in charge shall protect him from insult and annoyance and communication with others while at labor, and in going to and returning from the same, and he may use such means as are necessary and proper therefor, and any person persisting in insulting and annoying or communicating with any prisoner after being first commanded by such officer to desist shall be punished by a fine not exceeding ten dollars or by imprisonment not exceeding three days.

Punishment of convict for disorderly conduct.

(5878) § **19.** If any person confined in any jail upon a conviction or charge of any offense, is refractory or disorderly, or if he wilfully destroy or injure any article of bedding or other furniture, door or window, or any other part of such prison, the sheriff of the county, after due inquiry, may chain and secure such person, or cause him to be kept in solitary confinement not more than three days for any one offense; and during such solitary confinement he may be fed with bread aud water only, unless other food is necessary for the preservation of his health.

Punishment for escaping from prison.

(5879) § **20.** Any person committed to a Territorial prison who shall escape from or break said Territorial prison with intent to escape therefrom, or who shall attempt by force or violence, or in any other manner, to escape from said prison, whether such escape be effected or not, shall upon conviction thereof, be

punished by imprisonment in said prison for a term not exceeding double the term for which he or she was so sentenced, to commence from and after the expiration of his or her former sentence.

Same for person not convicted

(5880) § **21**. If any person who may be imprisoned pursuant to a sentence of imprisonment in the county jail, or any person who shall be committed for the purpose of detaining him for trial, for any offense not capital, shall break prison and escape, he shall be imprisoned in the county jail for the term of six months.

Same when committed for capital offenses.

(5881) § **22**. If any person shall be committed to prison, for the purpose of detaining him for trial, for a capital offense, shall break prison and escape, he shall be imprisoned in the Territorial prison for the term of two years.

Prisoners in case of fire.

(5882) § **23**. If any prison, or any building thereto, shall be on fire, and the prisoners shall be exposed to danger by such fire, the keeper may remove such prisoners to a place of safety, and there confine them, so long as may be necessary to avoid such danger, and such removal and confinement shall not be deemed an escape of such prisoners.

When a poor convict is held for fine and costs.

(5883) § **24**. When any poor convict shall have been confined in any prison for the space of six months, for the non-payment of fine and costs only, or either of them, the sheriff of the county in which such person shall be imprisoned shall make a report thereof to any two justices of the peace for such county; if required by such justices, the said keeper shall bring such convict before them, either at the prison, or at such other convenient place thereto as they shall direct, the said justices shall proceed to inquire into the truth of said report, and if they shall be satisfied that the report is true, and the convict has not had since his conviction any estate, real or personal, with which he could have paid the sum for the nonpayment of which he was committed, they shall make a certificate thereof to the sheriff of the county, and direct him to discharge such convict from prison and the sheriff shall forthwith discharge him.

Sheriff to receive and hold United States prisoners.

(5884) § **25**. All sheriffs, jailers, prison keepers, and their and each and every of all their deputies, within this Territory, to whom any person or persons shall be sent or committed, by virtue of legal process, issued by or under the authority of the United States, shall be and they are hereby enjoined and required to receive such persons into custody, and to keep them safely until they be discharged by due course of the laws of the United States; and all such sheriffs, jailers, prison keepers and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them, or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this Territory.

United States shall be liable for expenses of keeping prisoners

(5885) § **26**. The United States shall be liable to pay for the support and keeping of said prisoners the same charges and allowances as are allowed for the support and keeping of prisoners committed under authority of this Territory.

(5886) § **27**. Before every stated term of the United States

court, to be held within this Territory, the said sheriffs, jailers and prison keepers shall make out, under oath, a calendar of prisoners in their custody, under the authority of the United States, with the date of their commitment, by whom committed, and for what offense, and transmit the same to the judge of the district court of the United States for this district, and at the end of every six months they shall transmit to the United States marshal of this Territory, for allowance and payment of their account, if any, against the United States, for the support and keeping of such prisoners, as aforesaid.

Calendar of United States prisoners to be submitted to United States courts

(5887) § **28**. There shall be established and kept in every county, by authority of the board of county commissioners and at the expense of the county, a prison for the safe keepingof prisoners lawfully committed.

Prisons established in every county.

(5888) § **29**. The grand jury at each term of the district court, shall make personal inspection of the condition of the county prison, as to the sufficiency of the same for the safe keeping of prisoners, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last term, and the court shall give this duty in special charge to such grand jury, and it shall be imperative upon the board of county commissioners to issue the necessary orders, or cause to be made the necessary repairs, in accordance with the complaint or recommendation at the grand jury.

Grand juries shall examine county prisons

(5889) § **30**. The sheriff of the county, by himself or deputy, shall keep the jail, and shall be responsible for the manner in which the same is kept. He shall keep separate rooms for the sexes, except where they are lawfully married; he shall provide proper meat, drink and fuel for prisoners.

Sheriff or his deputy shall keep the jail.

(5890) § **31**. Whenever a prisoner is committed for crime, or in any suit in behalf of the Territory, the county board shall allow the sheriff his reasonable charge for supplying such prisoners.

Keeping the prisoner to be paid for by court

(5891) § **32**. When a prisoner is confined by virtue of any process directed to the sheriff, and which shall require to be returned to the court whence it issued, such sheriff shall keep a copy of the same, together with the returns made thereon, which copy, duly certified by such sheriff, shall be *prima facie* evidence of his right to retain such prisoner in custody.

Authority of sheriff.

(5892) § **33**. All instruments of every kind, or attested copies thereof, by which a prisoner is committed or liberated, shall be regularly indorsed and filed, and safely kept in a suitable box by such sheriff, or by his deputy, acting as a jailer.

Commitments filed by the sheriff

(5893) § **34**. Such box, with its contents, shall be delivered to the successor of the officer having charge of the prison.

Commitments to be delivered to successor.

(5894) § **35**. When there is no sufficient prison in any county wherein any criminal offense shall have been committed, any judge of the district court of such county, upon application of the sheriff, may order any person charged with a criminal offense, and ordered to be committed to prison, to be sent to the jail of the county nearest having a sufficient jail, and the sheriff of such nearest county shall, on exhibit of such judge's order, receive and keep in custody, in the jail of his county, the prisoner

Prisoner sent to jail of another county.

ordered to be committed as aforesaid, at the expense of the county from which said prisoner was sent, and the said sheriff shall, upon the order of the district court, or a judge thereof, redeliver such prisoner when demanded.

Fugitives may be kept in any county jail.

(5895) § **36**. Any county jail may be used for the safe keeping of any fugitive from justice or labor in this Territory, in accordance with the provisions of any act of Congress, and the jailer shall, in this case, be entitled to reasonable compensation for the support and custody of such fugitive from the officer having him in custody.

Juvenile prisoners.

(5896) § **37**. Juvenile prisoners shall be treated with humanity, and in a manner calculated to promote their reformation; they shall be kept, if the jail will admit of it, in apartments separate from those containing more experienced and hardened criminals; the visits of parents, guardians and friends, who desire to exert a moral influence over them, shall at all reasonable times be permitted.

ARTICLE 24.—COUNTY JAILS.

SECTION.
1. Judges shall prescribe rules for jails.
2. Rules promulgated and preserved, how.
3. Sheriff to post rules.
4 Judges may amend rules.
5. Sheriff to have charge of jail.
6. Jail register, contains what.
7. Sheriff shall make report on the jail.
8. Charge to grand jury regarding jails.
9. Grand jury shall visit jail.
10. Duty of county board in relation to jails
11. Sheriff to provide board and necessary articles.
12. Sheriff must visit jail once a month
13. Jailer shall be a deputy sheriff.
14. Refusal and neglect to conform to the rules.

Judges shall prescribe rules for jails

(5897) § **1**. The judges of the district courts of the several judicial districts of this Territory shall, from time to time, as they may deem necessary, prescribe in writing, rules for the regulation and government of the jails in the several counties within their respective districts upon the following subjects:

First. The cleanliness of the prisoners.

Second. The classification of prisoners in regard to sex, age and crime, and also persons insane, idiots and lunatics.

Third. Beds and clothing.

Fourth. Warming, lighting and ventilation of the prison.

Fifth. The employment of medical and surgical aid when necessary.

Sixth. Employment, temperance and instruction of the prisoners.

Seventh. The supplying of each prisoner with a Bible.

Eighth. The intercourse between prisoners and their counsel and other persons.

Ninth. The punishment of prisoners for violation of the rules of the prison.

Tenth. Such other regulations as said judges may deem necessary to promote the wellfare of said prisoners: *Provided*, That such rules shall not be contrary to the laws of this Territory.

Rules promulgated and preserved, how.

(5898) § **2**. The said judges shall, as soon as necessary, cause a copy of said rules to be delivered to the county commissioners

in the several counties in their respective judicial districts; and it shall be the duty of said commissioners, forthwith to cause the same to be printed, and to furnish the sheriff of their county with a copy of said rules, for each and every room or cell of said jail, and also to forward a copy of said rules to the Secretary of the Territory, who may file away and preserve the same.

Sheriff to post rules.

(5899) § **3**. The sheriff shall, on receipt of said rules, cause a copy thereof to be posted up and continued in some conspicuous place in each and every room or cell of said jail.

Judges may amend rules

(5900) § **4**. The judges aforesaid named, from time to time, as they may deem necessary, revise, alter or amend said rules, and such revised rules shall be printed and disposed of by said commissioners and sheriff in the same manner as is directed by the second and third sections of this article.

Sheriff to have charge of the jail

(5901) § **5**. The sheriff, or, in case of his death, removal or disability. the person by law appointed to supply his place, shall have charge of the county jail of his proper county, and of all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects, to the rules and directions of said district judge above specified, or which may, from time to time, by said judge be made, and communicated to him by said commissioners.

Sheriff shall keep jail register, what it shall contain.

(5902) § **6**. The sheriff, or other officers performing the duties of sheriff of each county in this Territory shall as soon as necessary after the passage of this act procure at the expense of the proper county a suitable book, to be called the jail register, in which the said sheriff, by himself or his jailer, shall enter:

First. The name of each prisoner with the date and cause of his or her commitment.

Second. The date or manner of his or her discharge.

Third. What sickness, if any, has prevailed in the jail during the year, and if known what were the causes of such disease.

Fourth. Whether any or what labor has been performed by the prisoners, and the value thereof.

Fifth. The practice observed during the year of whitewashing and cleaning the occupied cells or apartments and the times and seasons of so doing.

Sixth. The habits of the prisoners as to personal cleanliness, diet and order.

Seventh. The means furnished prisoners of literary, moral and religious instruction, and of labor.

Eighth. All other matters required by said rules, or in the discretion of such sheriff deemed proper; that the said sheriff, or other officers performing the duties of sheriff, shall carefully keep and preserve the said jail register, in the office of the jailer of his proper county, and at the expiration of such office shall deliver the same to his successor in office.

Sheriff shall make report of the jail.

(5903) § **7**. The sheriff, or other officers performing the duries of sheriff, shall, on or before the first Monday of November, in each year, make out in writing from said jail register, a jail report one copy of which said report he shall forthwith file in the offiee of the clerk of the district court of the proper district, one copy with

the county clerk of his county, for the use of the commissioners thereof, and one copy of said report he shall transmit to the Secretary of the Territory, and it shall be the duty of the Secretary of the Territory to communicate the reports of the several sheriffs of this Territory to the Legislative Assembly, on or before the tenth day of its session annually.

Charge to the grand jury regarding jails.

(5904) § **8**. It shall be the duty of the district court to give this act in charge of the grand jury once each term of said court, and lay before them any and all rules, plans or regulations established by the district judge relating to county jails and prison discipline which shall then be in force

Grand jury shall visit jail and report.

(5905) § **9**. The grand jury of each county in this Territory shall, once at each term of the district court, while in attendance, visit the jail, examine its state and condition, examine and inquire into the discipline and treatment of prisoners, at their regular meetings of each year.

Duty of county board in relation to jails,

(5906) § **10**. It shall be the duty of the county commissioners, at the expense of their respective counties, to provide suitable means for warming the jail and its cells or apartments, beds and bedding, night buckets and such other permanent fixtures and repairs as may be prescribed by the said district judge; said commissioners shall also have power to appoint a physician to the jail, when they deem it necessary, and pay him such annual or other salary as they may think reasonable and proper, which salary shall be drawn out of the county treasury; and said medical officer, or any physician or surgeon who may be employed in the jail, shall make a report in writing whenever required by said commissioner, district judge, or grand jury.

Sheriff to provide board and necessary articles.

(5807) § **11**. It shall be the duty of the sheriff of each county to provide, first, bed clothing, washing, nursing, when required, and board generally, aud all necessaries for the comfort and welfare of said prisoners, as the said judge by his said rules shall designate for all persons confined by law, and he shall be allowed such compensation for services required by the provisions of this act, as may be prescribed by the county commissioners of their respective counties.

Sheriff must visit jail and examine condition once a month

(5908) § **12**. The sheriff shall visit the jail in person, and examine into the condition of each prisoner at least once each month, and once during each term of the district court, and it is hereby made his duty to cause all the cells and rooms used for the confinement of prisoners to be thoroughly whitewashed at least three times in each year:

Jailer shall be a deputy sheriff.

(5909) § **13**. The jailer or keeper of the jail shall, unless the sheriff elect to act as jailer in person, be a deputy appointed by the sheriff, and such jailer shall take the necessary oaths before entering upon the duties of his office: *Provided*, The sheriff shall in all case be liable for the negligence and misconduct of the jailer as of other deputies.

Refusal or neglect to conform to the rules.

(5910) § **14**. If the sheriff or jailer having in charge any county jail, shall neglect or refuse to conform to all or either of the rules and regulations established by said judge, or to any other duty or duties required of him by this act, he shall, on con-

viction thereof, by indictment for each case of such failure or neglect of duty as aforesaid, pay into the county treasury of the proper county, for the use of such county, a fine not less than ten dollars nor more than one hundred dollars, to be assessed by the district court of the proper district.

ARTICLE 25.—HABEAS CORPUS.

SECTION.
1. Application for writ of *habeas corpus*, issue and service
2. Person not committed for crime may apply.
3. Return of writ, hearing, causes for discharge.
4. Recognizance with security to be given.
5. When prisoner is remanded, second writ.
6. Power of judge under second writ.
7. Person cannot be committed unless indicted.
8. Prisoner liberated for want of prosecution.
9. Writ of *habeas corpus* not allowed to delay trial.
10. Prisoner shall not be removed to another prison, exception.
11. Penalty if judge refuses or delays writ.
12. Penalty if officer refuses to execute and return writ.
13. Removing or concealing prisoner to avoid writ of *habeas corpus*.
14. Copy of commitment to be given to prisoner, penalty for refusal.
15. Penalty for rearresting person on same cause.
16. All penalties inure to use of person aggrieved.
17. General issues may be pleaded.
18. Recovery of penalties no bar to civil action.
19. Who may issue writ of *habeas corpus*.

Application for writ of habeas corpus, issue and service.

(5911) § **1.** If any person shall be committed or placed under bond or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the Supreme or district court in term time, or any judge thereof in vacation, for a writ of *habeas corpus*, which application shall be in writing, and signed by the prisoner or some person on his behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The said court judge to whom the said application shall be made. shall forthwith award the said writ of *habeas corpus*, unless it shall appear from the petition itself, or from the document annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner, relieved, which said writ, if issued by the court, shall be under the seal of the court; if by a judge, under the hand of a judge, and shall be directed to the person in whose custody the prisoner is detained, and made returnable forthwith, to the intent that no officer, sheriff, jailer, keeper, or other person to whom such writ shall be directed, may pretend ignorance thereof. Every such writ shall be indorsed with these words, "by the *habeas corpus* act," and whenever the said writ shall by any other person, be served upon the sheriff, jailer, or keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under officers or deputies, at the jail or place where the prisoner is detained, he, or some of his under-officers or deputies, shall, make return of such writ, and bring or cause to be brought, the body of the prisoner before the court ot judge who granted the writ, or in case of the adjournment of the said court or absence of

the judge, then before any of the judges aforesaid, and certify the the true cause of his imprisonment, within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable; if beyond the distance of twenty miles and not above one hundred miles, then within ten days, and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ as aforesaid, and not longer.

Person not committed for crime may apply

(5912) **2.** When any person, not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his or her liberty, under any color or pretense whatever, he or she may apply for a writ of *habeas corpus* as aforesaid. Application shall be in writing, signed by the party or some person on his behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she is detained, which application or petition shall be verified by the oath or affirmation of the party applying, or some other person on his or her behalf. If the confinement or restraint is by virtue of any judicial writ, or process or order, a copy thereof shall be annexed thereto, or an affidavit made that the same has been demanded and refused; the same proceedings shall thereupon be had in all respects as are directed in the preceding section.

Return of the writ, the hearing, causes for the discharge of the prisoner

(5913) § **3.** Upon the return of the writ of *habeas corpus*, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The said prisoner may deny any of the material facts set forth in return, or may allege any fact to show, either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge, which allegations or denials shall be made on oath. The said return may be amended by leave of the court or judge, before or after the same is filed, as also may also all suggestions made against it, that thereby material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the said facts by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner and the person who holds him in custody, and shall dispose of the prisoner as the case may require; if it appears that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes.

First. When the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum or person.

Second. Where though the original imprisonment was unlawful, yet by some act, omission or event, which has subsequently taken place, the party has become entitled to his discharge.

Third. Where the process is defective in some substantial form required by law.

Fourth. Where the process though in proper form, has been issued in a case or under circumstances where the laws do not allow precess or orders for imprisonment or arrest to issue.

Fifth. When although in proper form, the process has been

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issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him.

Sixth. Where the process appears to have obtained by false pretense or bribery.

Seventh. Where there is no general law nor any judgment, order or decree of a court to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding.

No court or judge, on the return of a *habeas corpus*, shall, in any other manner inquire into the legality or justice of a judgment or decree of a court legally constituted; in all cases where the imprisonment is a criminal, or supposed criminal matter, if it shall appear to the said court or judge that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been informally made, or without due authority, or the process may have been executed by a person not authorized, the court or judge shall make a new commitment in proper form, and directed to the proper officer, or admit the party to bail, if the case be bailable.

Recognizance with security to be given, when

(5914) § **4**. When any person shall be admitted to bail on *habeas corpus*, he shall enter into recognizance, with one or more securities, in such sum as the court or judge shall direct, having regard to the circumstances of the prisoner, and the nature of the offense, conditioned for his or her appearance at the next district court, to be holden in and for the county where the offense was committed, or where the same is to be tried; where any court or judge shall admit to bail or remand any prisoner brought before him or them on any writ of *habeas corpus*, it shall be the duty of the said court or judge to bind all such persons as do declare anything material to prove the offense with which the prisoner is charged, by recognizance, to appear at the proper court having cognizance of the offense, on the first day of the next term thereof, to give evidence touching the said offense, and not to depart the said court without leave, which recognizance so taken, together with the recognizance entered into by the prisoner when he is admitted to bail, shall be certified and returned to the proper court on the first day of the next succeeding term thereof; if any such witness shall neglect or refuse to enter into a recognizance as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail until he shall enter into such recognizance, or he be otherwise discharged by due course of law; if any judge shall refuse or neglect to bind any such witness or prisoner by recognizance, when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

When prisoner is remanded, second writ.

(5915) § **5**. When any prisoner, brought up on a *habeas corpus* shall be remanded to prison, it shall be the duty of the court or judge remanding him to make out and deliver to the sheriff or other person to whose custody he shall be remanded, an order in writing stating the cause or causes of remanding him; if such pris-

oner shall obtain a second writ of *habeas corpus*, it shall be the duty of such sheriff, or other person to whom the same shall be directed, to return therewith the order aforesaid, and if it shall appear that the said prisoner was remanded for any offense adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

Power of judge under second writ of habeas corpus

(5916) § **6**. It shall not be lawful for any court or judge, on a second writ of *habeas corpus* obtained by such prisoner, to discharge the said prisoner, if he is clearly and specifically charged in the warrant of commitment with a criminal offense; but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offense is bailable by law, or remand him to prison where the offense is not bailable, or where such prisoner shall fail to give the bail required.

Person cannot be again committed unless indicted.

(5917) § **7**. No person who has been discharged by order of a court or judge on a *habeas corpus*, shall be again imprisoned, restrained, or kept in custody for the same cause, unless he be afterward indicted for the same offense; or unless by the legal order or process of the court wherein he is bound by recognizance to appear. The following shall not be deemed to be the same cause:

First. If after a discharge for a defect of proof, or on any material defect in the commitment in a criminal case, the prisoner should be again arrested on sufficient proof, and committed by legal process for the same offense.

Second. If in a civil suit the party has been discharged for any illegality in the judgment or process, and is afterward imprisoned by legal process for the same cause of action.

Third. Generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law the party may be a second time imprisoned, if the cause be legal, and the forms required by law observed.

Prisoner liberated for want of prosecution, when.

(5918) § **8**. If any person shall be committed for a criminal or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the the second term of the court having jurisdiction of the offense, the prisoner shall be let at liberty by the court, unless the delay shall happen on the application of the prisoner; if such court at the second term shall be satisfied that due exertions have been made to procure the evidence for and on behalf of the Territory, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term; if any such prisoner shall have been admitted to bail for a crime other than a capital offense, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation that the witnesses for the Territory are absent, such witnesses being mentioned by name, and the court shown wherein their testimony is material.

Writ of habeas corpus not allowed to delay trial.

(5819) § **9**. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on *habeas corpus* under this act out of the county in which he or she is con-

fined, within fifteen days next preceding the term of the court at which such person ought to be tried, except it be to convey him or her into the county where the offense with which he or she stands charged is properly cognizable.

Prisoner shall not be removed from one prison to another except in certain cases.

(5920) § **10**. Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper, or other person, or his under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison or custody into other prison or custody, unless it be by *habeas corpus*, or some other legal writ; or where the prisoner shall be delivered to the constable, or other inferior officer, to be carried to some common jail; or shall be removed from one place to another, within the county, in order to his discharge or trial in due course of law; or in case of sudden fire, infection or other necessity, or where the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the act concerning jails and jailers; or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of the United States, or territories; if any person shall, after such commitment as aforesaid, make out, sign or countersign any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or aggrieved party, a sum not exceeding three hundred dollars, to be received by the prisoner or party aggrieved in the manner hereinafter mentioned.

Penalty if judge refuses or delays writ.

(5921) § **11**. Any judge empowered by this act to issue writs of *habeas corpus*, who shall corruptly refuse to issue such writ, when legally applied to, in a case where such writ may lawfully issue, or who shall, for the purpose of oppression, unreasonably delay the issuing of such writ, shall for every such offense, forfeit to the prisoner or party aggrieved a sum not exceeding five hundred dollars.

Penalty if officer refuses to execute and return writ.

(5922) § **12**. If any officer, sheriff, jailer, keeper or other person to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of said writ, within the time required by this act, all and every such officer, sheriff, jailer, keeper or other person, shall be deemed guilty of contempt of the court or judge who issued said writ; whereupon the said court or judge may, and shall, issue an attachment against such officer, sheriff; jailer, keeper or other person, and cause him or them to be committed to the jail of the county, there to remain without bail or mainprise, until he or they shall obey the said writ; such officer, sheriff, jailer, keeper or other person, shall also forfeit to the prisoner or agrieved party a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

Removing or concealing prisoner with intent to avoid a writ of habeas corpus.

(5923) § **13**. Any one having a person in his custody, or under his restraint, power or control, for whose relief a writ of *habeas corpus* is issued, who, with intent to avoid the effect of such writ, shall transfer such person to the custody, or place him or her under the control of another, or shall conceal him or her, or change the

place of his or her confinement, with intent to avoid the operation of such writ, or with intent to remove him or her out of this Territory, shall forfeit for every such offense one thousand dollars, and be imprisoned not less than one year, nor more than five years; in any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of *habeas corpus* had issued at the time of the removal, transfer or concealment therein mentioned; if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

Copy of commitment to be given to prisoner on demand, penalty for refusal.

(5924) § **14**. Any sheriff or his deputy, any jailer or coroner, having custody of any prisoner committed on a civil or criminal process of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment by virtue of which he is imprisoned, within six hours after the demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

Penalty for re-arresting person on same cause.

(5925) § **15**. Any person who, knowing that another has been discharged by order of a competent judge or tribunal, on a *habeas corpus*, shall contrary to the provisions of this act, arrest or detain him again for the same cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offense, and one thousand dollars for every subsequent offense.

All penalties insure to use of person aggrieved.

(5926) § **16**. All the pecuniary forfeitures under this act shall inure to the use of the party for whose benefit the writ of *habeas corpus* issued, and shall be sued for and recovered, with costs in the name of the Territory, by every person aggrieved.

General issue may be pleaded.

(5927) § **17**. In any action or suit for any offense against the provisions of this act, the defendant or defendants may plead the general issue, and give the special matter in evidence.

Recovery of penalties no bar to civil action.

(5928) § **18**. The recovery of the said penalties shall be no bar to a civil suit for damages.

Who may issue writ of habeas corpus.

(5929) § **19**. The Supreme and district courts within this Territory, or the judges thereof in vacation, shall have power to issue writs of *habeas corpus*, for the purpose of bringing the body of any person confined in any jail within the same before them, to testify or be surrendered in discharge of bail. When a writ of *habeas corpus* shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness, shall be confined in any jail in this Territory, out of the county in which such principal or witness is required to be surrendered, or to any county in this Territory, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid, shall, by the officer executing such writ, be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of *habeas corpus* shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the courts respectively.

Chap. 72. ARTICLE 26.—OFFENSES COMMITTED WHILE NEBRASKA LAWS WERE IN FORCE. CERTAIN CIVIL RIGHTS.

AN ACT Relating to Offenses in Oklahoma Territory Committed while the Laws of Nebraska were in force therein and Relating to the Prosecution thereof, and also Relating to Civil Rights accrued under the Laws of Nebraska.

[Took effect December 25, 1890.]

SECTION.
1. Prosecution of offenses committed while Nebraska laws were in force.
2. Cases pending, governed by laws of Nebraska.
3. Prosecutions not yet commenced.
4. Rights and proceedings arising under Nebraska laws.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Prosecution of offenses committed while Nebraska laws were in force.

(5930) § **1.** That as to all offenses committed in this Territory against the laws of Nebraska while in force in this Territory, said laws so offended against, shall continue in force until the apprehension and prosecution and until the punishment and penalty is imposed upon such offenders.

Cases pending to be governed by Nebraska laws.

(5931) § **2.** That as to all offenses mentioned in the preceding section in which prosecutions are now pending, the laws of criminal procedure of the state of Nebraska now and heretofore in force in this Territory shall continue in force for the purpose of prosecuting such offenses, but for no other purpose.

Prosecutions not yet commenced.

(5932) § **3.** That as to all offenses mentioned in section of this act, where prosecutions have not yet been commenced, such offenses shall be prosecuted under the procedure in force in this Territory after the adjournment of the first sessession of the Legislative Assembly.

Rights and proceedings arising under Nebraska laws.

(5933) § **4.** The expiration of the time for which the laws of Nebraska, where by Act of Congress extended over this Territory, shall not effect any act done, any rights accruing, or which have accrued, or been established, nor any suit or proceeding had or commenced in any civil cause under said laws, but such rights and proceedings shall have as full force and effect as though said laws had continued in full force, but the proceedings in such cases, shall conform to the provisions of the statutes of this Territory as far as consistent.

ARTICLE 27.—BAIL, REPRIEVES, COMMUTATIONS AND PARDONS.

SECTION.
1. Bail must be admitted except crime punishable by death.
2. Bail when crime is punishable by death.
3. Bail after conviction.
4. Qualification and justification of sureties.
5. Discharge of defendant.
6. Deposit of bail
7. Defendant arrested by his bail.
8. Forfeiture of bail.
9. Additional security demanded.
10. Governor may grant reprieves, commutations and pardons
11. In cases of treason.
12. Annual report to Legislature.
13. Report of case on application for pardon.
14. Applications for pardon.
15 Method of making application for pardon.
16. Contest of application.
17. Governor may make additional rules.
18. Papers filed with Secretary of Territory.

Bail must be admitted except when crime is punishable by death.

(5934) § **1**. Bail, by sufficient sureties, shall be admitted upon all arrests in criminal cases where the offense is not punishable by death, and in such cases it may be taken by any of the persons or courts authorized by law to arrest and imprison offenders.

Bail when crime is punishable by death.

(5935) § **2**. Bail, by sufficient sureties, may be admitted upon all arrests in criminal cases where the punishment may be death, unless the proof is evident or the presumption great; and in such cases it shall be taken only by the Supreme Court or a district court, or by a justice or judge thereof, who shall exercise their discretion therein, having regard to the nature and circumstances of the offense, and of the evidence and to the usages of law; but if the case has been tried by jury, and the jury have disagreed on their verdict, then the above presumption is removed, and the defendant shall thereupon be entitled to bail, unless it shall appear to the court or judge thereof, by due proof, that such disagreement was occasioned by the misconduct of the jury.

Bail after conviction.

(5936) § **3**. After conviction of an offense not punishable with death, a defendant who sues out a writ of error for the revision of a judgment may be admitted to bail:

First. As a matter of right when the writ of error is from a judgment imposing a fine only.

Second. As a matter of discretion in all other cases.

Qualification and jurisdiction of sureties.

(5937) § **4**. The qualifications of bail are the same as those in civil cases, and the sureties must in all cases justify by affidavits taken before the magistrate, court or judge, that they each possess those qualifications.

Discharge of defendant

(5938) § **5**. Upon the allowance of bail and the execution of the requisite recognizance, bond or undertaking, to the Territory, the magistrate, judge or court, must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged.

Deposit for bail.

(5939) § **6**. A deposit of the sum of money mentioned in the order admitting to bail is equivalent to bail and upon such deposit the defendant must be discharged from custody.

Defendant may be arrested by his bail.

(5940) § **7**. Any party charged with a criminal offense and admitted to bail may be arrested by his bail at any time before they are finally discharged, and at any place within the Territory; or by a written authority indorsed on a certified copy of the recognizance, bond or undertaking, may empower any office or person of suitable age and discretion, to do so, and he may be surrendered and delivered to the proper sheriff or other officer, before any court, judge or magistrate having the proper jurisdiction in the case; and at the request of such bail the court, judge or magistrate shall re-commit the party so arrested to the custody of the sheriff or other officer, and indorse on the cognizance, bond or undertaking, or certified copy thereof, after notice to the district attorney, and if no cause to the contrary appear, the discharge and exoneration of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law.

Forfeiture of bail

(5941) § **8**. If, without sufficient excuse, the defendant neglects to appear according to the terms or conditions of the recognizance, bond or undertaking, either for hearing, arraignment, trial or judgment, or upon any other occasion when his presence in court or before the magistrate may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the recognizance, bond or undertaking of bail, or the money deposited instead of bail, as the case may be, is and shall be thereupon declared forfeited. But, if at any time before the final adjournment of court the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture to be discharged upon such terms as may be just. After the forfeiture, the district attorney must proceed with all due diligence, by action against the bail upon the instrument so forfeited. If money deposited instead of bail be so forfeited, the clerk of the court or other officer with whom it is deposited, must, immediately after the final adjournment of the court, pay over the money deposited to the county treasurer.

Additional security may be demanded.

(5942) § **9**. When proof is made to any court, judge or other magistrate having authority to commit on criminal charges, that a person previously admitted to bail on any such charge is about to abscond, or that his bail is insufficient, or has removed from the Territory, the judge or magistrate shall require such person to give better security, or for default thereof cause him to be committed to prison; and an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued by such judge or magistrate, setting forth the cause thereof.

Governor may grant reprieves, commutations and pardons

(5943) § **10**. The Governor has power to grant reprieves, commutations and pardons, after convictions, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as he may think proper, subject to the regulations provided in this chapter, and in the chapter defining the duties and powers of the executive.

In case of treason report to legislature

(5944) § **11**. He may also suspend the execution of the sentence upon a conviction for treason, until the case can be reported to the Legislature at the next meeting, when the Legislature must either pardon or commute the sentence, direct the execution thereof, or grant a further reprieve.

Must make annual report to legislature.

(5945) § **12**. He must annually communicate to the legislature each case of reprieve, commutation or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

On application for pardon Governor may demand report of case

(5946) § **13**. When an application is made to the Governor for a pardon, he may require the presiding judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish him, without delay, with the statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting the pardon.

Application for pardon.

(5947) § **14**. All applications for pardons on behalf of any

person or persons convicted in any court of this Territory, of any crime punishable under the laws thereof by imprisonment in the Territorial prison, and sentenced to such imprisonment, shall be made and conducted in the manner hereinafter prescribed.

Method of making application for pardon.

(5948) § **15**. Notice of the application for such pardon shall be given to the judge who presided at the trial, or his successor in office, and to the district attorney, or his successor in office, of the district, who prosecuted the indictment against such person or persons so convicted and sentenced, at least thirty days before such application shall be filed with the Governor; the service of such notice upon the judge and district attorney aforesaid, shall be made and return thereof certified in the same manner as now provided for the service of summons in the district court, and such certificate of service shall accompany every such application to the Governor; a notice of such application, setting forth the name of the person or persons on whose behalf it is made, the crime of which he shall have been convicted, the time of such conviction and the term of imprisonment, shall also be published at least once each week for four successive weeks in some newspaper of general circulation in the county where the offense for which pardon is sought was committed; or if there be no newspaper published therein, then such notice shall be posted in a conspicuous place on the door of the court house of such county for four successive weeks prior to the application; the affidavit of the publisher of such paper or the person posting such notice, shall also accompany such application showing that such notice has been published or posted as herein provided.

Contest of application

(5949) § **16**. Any person or persons feeling aggrieved by the application for any pardon may contest the same, and for that purpose may appear in person before the Governor during the consideration of said application, and show cause by written or oral testimony why such pardon should not be granted.

Governor may make additional rules.

(5950) § **17** The Governor may in his discretion make such additional rules and regulations governing applications for pardons as may from time to time seem to him best, not in conflict with the provisions of this act; but the provisions of this act shall not apply to the applications for pardon to be granted within thirty days before the time when the convict would otherwise be legally entitled to discharge.

Papers filed with the Secretary of the Territory

(5951) § **18**. When the Governor grants a reprieve, commutation or pardon, he must, within ten days thereafter, file all the papers presented to him in relation thereto, in the office of the Secretary of the Territory, by whom they must be kept as records, open to public inspection.

Compensation for Attorneys.

SECTION 1.
County to employ counsel for indigent defendants.

Compromising Misdemeanors by Leave of the Court.

SECTION.
2. Misdemeanor compromised, when.
3. Stay of proceedings in such case.
4. Such a stay is a bar.
5. No public offense compromised except as provided.

Corporations, Criminal Actions Against.

SECTION.
6. Summons for corporation.
7. Form of such summons.
8. When and how served.
9. Examination of charge.
10. Certificate of magistrate
11. Grand jury may proceed for indictment.
12. Appearance and plea.
13 Fine collected, how.

Errors in Pleadings Entitling Affidavits.

SECTION.
14 Entitling affidavits
15. Informalities in pleadings not fatal.

Disposal of Property Stolen or Embezzled.

SECTION.
16. Stolen property to be held by officer.
17. Magistrate to give order for delivery.
18. Magistrate to deliver property on proof.
19. Court may deliver by order.
20. Property not claimed in six months.
21. Receipts given to defendant and clerk.

County to employ counsel for indigent defendant

(5952) § **1.** In all criminal cases triable in the Territory of Oklahoma, where it is satisfactorily shown to the court that the defendant has no means, and is unable to employ a counsel, the court shall, in all such cases, where counsel is appointed and assigned for defense, allow and direct to be paid by the county in which such trial is had, a reasonable and just compensation to the attorney or attorneys so assigned for such services as they may render: *Provided, however*, That such attorney or attorneys shall not be paid a sum to exceed twenty-five dollars in any one case.

Misdemeanor may be compromised, when.

(5953) § **2.** When a defendant is held to answer on a charge of misdemeanor, for which the person by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed:

First. By or upon an officer of justice while in the execution of the duties of his office.

Second. Riotously; or,

Third. With an intent to commit a felony.

Stay of proceedings in such case.

(5954) § **3.** If the party injured appear before the court to

which the deposition and statement are required to be returned at any time before trial, on an indictment for the offense, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. But in that case the reasons for the order must be set forth therein and entered upon the minutes.

Such a stay is a bar.

(5955) § **4**. The order authorized by the last section is a bar to another prosecution for the same offense.

No public offense compromised except as provided.

(5956) § **5**. No public offense can be compromised, nor can any proceedings for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in sections 5953 and 5954.

Summons for corporation.

(5957) § **6**. Upon an information against the corporation, the magistrate may issue a summons signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place to answer the charge. The time to be not less than ten days after the issuing of the summons.

Form of such summons.

(5958) § **7**. The summons must be in substantially the following form:

County of.....

In the name of the Territory of Oklahoma.

To the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer to the charge made against you, upon the information of A. B., or the presentment of the grand jury of the county of..... for (designating the offense generally).

Dated at the city, or town, of....., the..... day of..... .....18....

G..... H.....

Justice of the peace (as the case may be.)

When and how served

(5959) § **8**. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier or managing agent thereof.

Examination of charge

(5960) § **9**. At the time appointed in the summons, the magistrate must investigate the charge in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

Certificate of magistrate.

(5961) § **10**. After hearing the proofs the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offence charged, and must return the depositions and certificate in the same manner prescribed by the law on preliminary examinations.

Grand jury may proceed for indictment.

(5962) § **11**. If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer.

Appearance and plea.

(5963) § **12.** If an indictment be found, the corporation may appear by counsel to answer the same. If they do not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

Fine collected, how

(5964) § **13.** When a fine is imposed upon a corporation, on conviction it may be collected, by virtue of the order imposing it, by the sheriff of the county, out of their real and personal property, in the same manner as upon an execution.

Affidavits need not be entitled.

(5965) § **14.** It is not necessary to entitle an affidavit, or deposition in the action, whether taken before or after indictment, or upon a writ of error; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment or writ of error in which it is made.

Informalities in pleadings, not fatal

(5966) § **15** Neither a departure from the form or mode prescribed in this chapter in respect to any pleadings or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant or tended to his prejudice, in respect to a substantial right.

Stolen property to be held by officer

(5967) § **16.** When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Magistrate to give order for delivery.

(5968) § **17.** On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

Magistrate must deliver property on proof

(5969) § **18.** If the property stolen or embezzled come into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Court may deliver by order

(5970) § **19.** If property stolen or embezzled have not been delieved to the owner, the court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

If property not claimed in six months

(5971) § **20.** If property stolen or embezzled be not claimed by the owner before the expiration of six month from the conviction of a person stealing or embezzling it, the magistrate or other officer having it in his custody must on payment of the necessary expenses incurred in its preservation, deliver it to the county commissioners to be paid into the county treasury.

Receipt given to defendant and clerk.

(5972) § **21.** When money or other property is taken from a defendant arrested upon a charge of public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken. One of which receipts he must deliver to the defendant, and the other of which he must file with the clerk of the court to which the

depositions and statement must be sent, as provided in the last section of the chapter on preliminary examinations. Chap. 73.

CHAPTER LXXIII.—PROCEDURE—CRIMINAL, BEFORE JUSTICES.

ARTICLE.
1 Procedure
ARTICLE.
2. Appeals

ARTICLE 1.—PROCEDURE.

SECTION.
1 Justice as committing magistrate.
2 Security to keep the peace.
3 Sworn complaint made.
4 Warrant, form of.
5 Warrant served in another county.
6 Criminal docket.
7. Defendant to plead, how.
8. Case to be tried, how.
9. Change of venue.
10 Proceedings upon change of venue.
11. Postponement of trial.
12. Defendant's presence.
13. Trial by jury
14. Challenges
15 Oath to jury.
16. Duty of the jury.
17 Court gives no charge.
18. Jury in consultation.
SECTION.
19. Verdict of the jury.
20 Verdict as regards part of the defendants when several.
21. Jury discharged, when.
22. New trial.
23. Judgment when guilty.
24. Fine and imprisonment.
25. Acquittal and discharge, prosecutor to pay costs, when.
26. Judgment must be entered at once
27. Defendant discharged at once on acquittal.
28 Certified copy of judgment of imprisonment.
29. Custody until fine is paid.
30. Fines paid over to treasurer.
31. Bail allowed before conviction.
32. Subpoenas, contempts.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Justice as committing magistrate

(5973) § **1**. The criminal procedure relating to the jurisdiction and duties of justice of the peace as committing magistrates; direct the mode of proceeding, when an information, verified by oath, is laid before them of the commission of a public offense triable on indictment.

Security to keep the peace.

(5974) § **2**. The same procedure relates to their jurisdiction and duties in cases of securities to keep the peace.

Sworn complaint made.

(5975) § **3**. All proceedings and actions before a justice court, for a public offense of which such court has jurisdiction, to try and determine the same, must be commenced by complaint under oath setting forth the offense charged, with such particulars of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint. The complaint, if found insufficient, may be amended to any extent to conform to the facts proven. If it be made to appear to the court that the defendant, by reason of such amendments, cannot safely proceed with the trial, he shall be allowed time sufficient to prepare his defense to the information as amended, and for that purpose the cause may be continued.

Warrant, form of.

(5976) § **4**. If the justice of the peace is satisfied therefrom that the offense complained of has been committed, he must issue

a warrant of arrest, which must be substantially in the following form:

TERRITORY OF OKLAHOMA, } ss.
COUNTY OF..... }

To any sheriff or constable of said county:

Complaint upon oath having been this day made before me.... by C. D., that the offense of (designating it generally,) has been committed, and accusing E. F., thereof, you are therefore commanded forthwith to arrest the above named E. F., and bring him before me forthwith, at (naming the place,)

Witness my hand at.....,this.....day of.....A. D.....

A. B.

Warrant served in another county.

(5977) § **5**. The warrant may be served in any other county in the manner prescribed by criminal procedure relating to justices of the peace.

Criminal docket

(5978) § **6**. A docket must be kept by the justice of the peace, in which must be entered each action, and the proceedings of the court therein.

Defendant to plead, how.

(5979) § **7**. The defendant may make the same plea as upon an indictment. His plea must be oral, and entered in the minutes. If the defendant plead guilty the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appears to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury.

Case to be tried, when.

(5980) § **8**. Upon a plea other than a plea of guilty, if neither the Territory nor the defendant demand a trial by jury, or an adjournment or change of venue is not granted, the court must proceed to try the case.

Change of venue.

(5981) § **9**. In criminal proceedings before a justice of the peace, a change of the place of trial or examination may be had at any time before such trial or examination commences, when it appears from the affidavit of the defendant that he has reason to believe and does believe that he cannot have a fair and impartial trial or examination before the justice about to try or examine such case by reason of the bias or prejudice of such justice; whereupon the attorney for the Territory may object to a justice to whom it is to be sent as provided for in changes of place of trial in civil cases, and thereupon the case shall be transferred to the next nearest justice of the same county unless the parties otherwise agree: *Provided*, That a change of the place of trial or examination under the provisions of this section can be had but once.

Proceedings upon change of venue.

(5982) § **10**. When a change of the place of trial is ordered the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

Postponement of trial

(5983) § **11**. Before the commencement of the trial either party may, upon good cause shown, have a reasonable postponement thereof.

Defendant's presence.

(5984) § **12**. The defendant must be personally present before the trial can proceed.

Trial by jury.

(5985) § **13**. Before the court hears any testimony upon the trial either party may demand a jury. The formation of the jury is provided for in chapter 71, article 10.

Challenges

(5986) § **14**. The same challenges may be taken by either party to any individual juror, as on the trial of an indictment for a misdemeanor; but the challenge must, in all cases, be tried by the court.

Oath to jury.

(5987) § **15**. The court must administer to the jury the following oath:

You do swear that you will well and truly try this issue between the Territory of Oklahoma and A. B, the defendant, and a true verdict render according to the evidence. So help you God

Any juror who is conscientiously scrupulous of taking an oath, shall be allowed to make affirmation, substituting for the words "so help you God," at the end of the oath, the words, "this you do affirm under the pains and penalties of perjury."

Duty of the jury.

(5988) § **16**. After the jury are sworn they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant.

Court decides the law but gives no charge.

(5989) § **17**. The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

Jury in consultation, officers sworn.

(5990) § **18**. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect:

You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict. and that you willl return them into court when they have so agreed, or when ordered by the court.

Verdict of the jury.

(5991) § **19**. The verdict of the jury must, in all cases, be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter or cause it to be entered in the docket.

Verdict as regards part of defendants when several

(5992) § **20**. When several defendants are tried together, if the jury cannot agree npon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

Jury discharged, when.

(5993) § **21**. The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

New trial.

(5994) § **22**. If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on until a verdict is rendered.

Judgment when guilty.

(5995) § **23**. When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon, of fine or imprisonment, or both, as the case may be.

Fine and imprisonment.

(5996) § **24**. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, in the proportion of one day's imprisonment for every two dollars of the fine.

Acquittal and discharge, prosecutor to pay costs, when.

(5997) § **25**. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security, by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

Judgment must be entered at once.

(5998) § **26**. At the close of the trial, judgment must be immediately rendered by the justice, and entered in his docket.

Defendant discharged at once on acquittal

(5999) § **27**. If judgment of acquittal is given, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

Certified copy of judgment of imprisonment.

(6000) § **28**. When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff, or other officer, which is a sufficient warrant for its execution.

Custody until fine is paid.

(6001) § **29**. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

Fines must be paid over to treasurer.

(6002) § **30**. Upon the payment of the fine to the justice, the officer must discharge the defendant, if he is not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county treasurer, which shall be placed in and become a part of the general county fund. If a fine is imposed and paid before commitment, it must be applied as prescribed in this section.

Bail allowed before conviction.

(6003) § **31** The defendant, at any time after his arrest and before conviction, may be admitted to bail, by giving an undertaking, with sufficient surety, in an amount to be fixed by the justice, for his appearence before the justice to answer the complaint.

Subpoenas, contempt.

(6004) § **32**. In all criminal proceedings, the justice may issue subpœnas for witnesses, and punish for contempts, as provided for in article 13 of chapter 71.

ARTICLE 2.—APPEALS IN CRIMINAL PROCEEDINGS.

SECTION.
1. Right to appeal in criminal cases, oral notice.
2. Appeal as in civil cases.
3. Bail on appeal.
4. Bail taken by any magistrate.
5. Witnesses may be bound to appear.
6. Proceedings on appeal, record and papers.
7. No appeal in criminal cases shall be dismissed.

Right to appeal in criminal cases, oral notice.

(6005) § **1.** The justice immediately on rendering judgment against the defendant, must inform him of his right to appeal therefrom, and the defendant may thereupon take an appeal to the district court of the county in which the trial was had, by giving notice orally to the justice that he appeals, and the justice must make an entry on his docket of the giving of such notice, and upon such appeal the action may be tried anew in the district court upon questions of law and fact, or fact alone, or the appeal may be determined therein upon questions of law alone, and the judgment may be set aside, affirmed or modified, or a new trial granted as provided for in chapter 71.

Appeal as in civil cases

(6006) § **2.** Instead of such appeal, the defendant may at any time within thirty days after judgment, appeal to such district court in the same manner, and such appeal may be determined as provided for in chapter 71.

Bail on appeal.

(6007) § **3.** Upon an appeal the justice must enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment shall not be stayed unless he enter into an undertaking in the amount fixed with sufficient surety to be approved by the justice to appear and answer at the next term of the district court, and not depart without leave of the same.

Bail taken by any magistrate.

(6008) § **4.** The bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit to bail, or by the district court or the clerk thereof.

Witnesses may be bound to appear.

(6009) § **5.** When an appeal is taken, the justice must, if application be made by the district attorney, cause all material witnesses on behalf of the prosecution to enter into an undertaking in like manner as in a case where a defendant is held to answer on a preliminary examination for an indictable offense

Proceedings on appeal, record and papers transmitted.

(6010) § **6.** Upon an appeal being taken, the justice must, within five days. transmit to the clerk of the district court, if the appeal be upon questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal, if any, and the undertaking of bail; or, if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions and other papers filed in the cause, the notice of appeal, if any, and the undertakings filed, and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers, and, if the return be defective to make further return and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justice's court.

No appeal in criminal cases shall be dismissed.

(6011) § **7.** No appeal from the judgment of a justice of the peace in criminal proceedings shall be dismissed. All proceedings necessary to carry the judgment upon appeal into effect shall be had in the district court: *Provided, however,* That when a new trial is granted the case must be remanded and a new trial had in the justice's court.

CHAPTER LXXIV.—RELIEF.

ARTICLE.
1. Congressional appropriation distributed.

ARTICEE.
2. Clerks of relief boards.

ARTICLE 1.—CONGRESSIONAL APPROPRIATION DISTRIBUTED.

SECTION.
1. Secretary of Territory to receive appropriations.
2. Duties of Territorial board of relief.
3. Distribution of aid.
4. County boards of relief.
5. Ward, village and township boards.
6. Purchase of supplies.
7. Supplies for the sick.
8. Distributing points.
9. Contracting powers of board.

SECTION.
10. Discretionary powers of commissioners.
11 Orders for goods and order of preference.
12. Commissioners' accounts filed.
13. Report of Secretary of Territory Money, when paid.
14. Penalty for misexpenditure.
15. Officials, how qualified.

AN ACT to Provide for the Distribution of the Money Appropriated by Congress for the Relief of Persons in Oklahoma Territory Rendered Destitute by the Unexampled Drouth of the present Season, and other Donations or Aid from any sources

[Took effect September 14, 1890.]

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Secretary to receive money

(6112) § **1**. That the Secretary of the Territory of Oklahoma be and he is hereby authorized to receive from the Treasury of the United States, the money appropriated by a joint resolution of Congress for the relief of persons in Oklahoma Territory rendered destitute by the unexampled drouth of the present season, approved September, 1890, and all other donations or aid from any source, and to execute proper vouchers for the same.

Duties of board of relief

(6113) § **2**. The Governor shall appoint, with the advice and consent of the Council, a commission consisting of three persons, who shall constitute a Territorial "Board of Relief." One from each of the three political parties in the Territory, whose duty it shall be to ascertain and make a record of all cases of destitution in the Territory, to purchase and distribute such supplies as are necessary to afford relief in the same, in the manner hereinafter provided.

Distribution of aid.

(6114) § **3**. The fund so appropriated by Congress, and other donations or aid, shall be distributed among the counties of the Territory of Oklahoma in proportion to their respective population as shown by the census taken under the direction of the Governor; but such ratio of distribution may be changed by the "Territorial Board" herein provided for, on full reports made to them by the county distributing committees, which reports shall be based upon reports made to them by the various wards, villages and townships. It is hereby made the duty of said township and county commissions to so report on request of the Territorial board of relief.

County board of relief

(6115) § **4**. For the purpose of creating county boards in each county the Governor, by and with the advice and consent of the Council, shall appoint three persons from each county in Oklahoma Territory, and no more than one of the same board shall belong to the same political party. The Governor shall be and is hereby authorized to remove any one or more of the persons so appointed for any failure to properly discharge the duties incumbent upon them under the provisions of this act, and by and with the advice and consent of the Council, may fill any vacancy which may occur by such removal or otherwise, if the Legislature be in session, and if not in session the Governor alone may fill such vacancy. It shall be the duty of each county board on the last day of each month to make a full and complete report to the "Territorial Board" of all supplies received and distributed by them.

Classes of boards.

(6116) § **5**. The respective boards created by the preceeding section of this act, in each county of this Territory are hereby empowered to appoint three discreet persons who are resident property holders, from each ward of the various cities and villages, from each village and from each Congressional township or fraction thereof, in Oklahoma Territory, whose duties shall be as hereinafter provided, and shall have the power to fill all vacancies which may occur.

Purchase of supplies.

(6117) § **6**. The "Territorial Board of Relief" shall from time to time, as the necessities of the destitute people may demand, and as the conditions of said fund will permit, contract at the lowest possible rates for the plain and ordinary necessities of life, which shall consist of flour, bacon, meal, beans and salt in suitable quantities, which contracts shall be in writing, plainly specifying the kind, grade, quantity and the price of each article, and shall designate the place where said goods are to be delivered and shall be signed by at least two of the commission above named, and also by the party contracting to supply the said goods, and shall be filed with the Secretary of the Territory and preserved in his office subject to inspection at all reasonable hours.

Supplies for sick.

(6118) § **7**. The "Territorial Board of Relief" may in like manner contract for the purchase of a proper quantity of supplies suitable to the care and sustenance of the sick.

Distributing points.

(6119) § **8**. The goods so contracted for, shall for Payne county be shipped to Stillwater and Perkins, via Guthrie or Wharton, as the "county board" may designate; for Logan county, to Guthrie; for Oklahoma county, to Oklahoma City and Edmond; for Cleveland county, to Norman; for Canadian county, to Frisco, via El Reno; for Kingfisher county, to Kingfisher and Henessey; for Beaver county, to Buffalo and Beaver; and shall be consigned to the commissioners provided for in section 4 of this act.

Contracting powers of board.

(6120) § **9**. The Territorial board of relief provided for in section 2 of this act shall have the authority to contract for and fix the rate for all necessary freight and storage of the goods purchased from the point of purchase to the point of destination. The county board provided for in section 4 of this act shall have

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authority to rent buildings in which to store the supplies shipped to them and from which to distribute them. The freight and storage of such goods from the point of purchase to the point of destination shall be paid by the Secretary of the Territory out of the relief fund, on the order of "The Territorial board of relief, and the rent of buildings at the points of distribution, shall be paid by the Secretary of the Territory out of the relief fund on the order of the county board, and in both cases the Secretary of the Territory shall hold such orders, and the receipts from the persons to whom the orders are given for the money shall be vouchers in the hands of the Secretary for the money so paid out.

Discretionary powers of commissioners,

(6121) § **10**. The commissioners provided for in section 4 of this act, shall receive the goods shipped to the respective counties, and shall send a receipt therefor to the Secretary and shall safely keep the goods and deliver them to the parties holding orders therefor, as hereinafter provided; but if any one of said commissioners, provided for in section 4, has good reason to believe that any of said orders are not in good faith, or that the holder of said order is not a fit subject of charity, they shall refuse to fill the same, or if there be not goods sufficient to fill the orders issued, they may fill them in part only to the end that there may be a fair distribution of said goods.

Preferred claimants.

(6122) § **11**. The three persons named in their respective townships, villages and wards shall see to the condition and situation of persons claimed to be destitute and shall give to such persons, who were lawful residents of Oklahoma, on the first day of August 1890, an order to the commission named in section 4 of this act, for goods, which order shall show the ward, village or township in which the one receiving it resides and which said commission may fill as hereinafter provided, and on issuing these orders children, widows and sick persons shall always be preferred. Next in order, men lawful residents who are heads of families shall be preferred according to the conditions of their respective families. The "Territorial Board" shall issue printed instructions to be distributed to the persons who are to act in the various counties and cities and townships as to how to proceed and shall prepare and set out forms for orders and on the back thereof forms to receipt for goods, said county commission shall so divide said goods at each ward, village and township shall receive its fair and just proportion of the goods sent to the respective counties.

Commissions accounts.

(6123) § **12**. The commission shall keep an accurate account of all receipts and disbursements and shall between the first and tenth days of each month file with the Secretary of the Territory a report of the same, for the next month preceding the date of such report.

Secretary's report.

(6124) § **13**. The Secretary of the Territory shall pay out said fund upon the order of the Territorial commission hereby created upon the presentation of any draft drawn thereon signed by a majority of such commission and shall report monthly to the Legislative Assembly how he has disposed of such relief fund.

(6125) § **14**. If any member of either of said boards shall knowingly connive at the expenditure of any of such money, or for the distribution of any of such supplies in any manner other than as contemplated by the act of Congress of the United States, in making such appropriation, or contrary to this act, such person shall be deemed guilty of a felony, and shall upon conviction thereof in a court of competent jurisdiction, shall be sentenced to the penitentiary for a period of not less than one year nor more than five years.

Expenditure, illegal, penalty.

(6126) § **15**. Each of the officers mentioned and described in this act shall before they enter upon their duties as such, take, subscribe and file with the Secretary of their respective boards, an oath or affirmation to support the constitution of the United States and the law of Congress made to establish Territorial form of government for Oklahoma Territory, and to faithfully discharge the trust imposed in them under this act to the best of their ability, and each or either of the members of the committee shall be authorized to administer an oath and propound such questions as they deem necessary to ascertain the worthiness of the subject for charity, and any person or persons, swearing falsely to obtain any part of the appropriation or donation or other aid, upon conviction thereof in a court of competent jurisdiction shall be sentenced to the penitentiary for a period of not exceeding one year.

Officials, how qualified.

ARTICLE 2.—CLERKS OF RELIEF BOARD.

AN ACT to provide clerks for county relief boards.

[Took effect November 23, 1890.]

SECTION.
1. Clerks of boards.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

(6127) § **1**. That each county board of relief be allowed one clerk for each distributing point in the county, who shall receive one dollar and fifty cents per day, for each day that rations are distributed, and be paid out of the relief fund: *Provided*, The county relief board may dispense with the services of a clerk, and the secretary of such board shall receive the compensation provided for herein.

Clerks of boards.

CHAPTER LXXV.—REVENUE.

AN ACT to provide for the raising and collecting of revenue.

[Took effect December 25, 1890.]

ARTICLE.
1. Property subject to taxation.
2. Manner of listing property.
3. Railroads.
4. Telegraph and telephone lines.
5. Assessment rolls.
6. County board of equalization.
7. Territorial board of equalization.
8. Rate of taxation and levy.
9. County treasurer's duty.
10. Delinquent taxes.
11. Miscellaneous provisions.

ARTICLE 1.—PROPERTY SUBJECT TO TAXATION.

SECTION.
1. General classes.
2. Property exempt from taxation.
3. Property subject to taxation.

General classes.

(6128) § **1**. All property, whether real or personal, all moneys, credits, investments in bonds, stocks owned by joint stock companies or otherwise, of persons residing in this Territory, the property of corporations now existing or hereafter created, and the property of all banks or banking companies, now existing or hereafter created, and of all bankers, except such property as is hereinafter expressly exempted, shall be subject to taxation, and such property, moneys, credits, investments, in bonds, stocks, joint stock companies or otherwise, or the value thereof, shall be entered on the list of taxable property for that purpose in the manner prescribed by this act.

Property exempt from taxation.

(6129) § **2**. The following classes of property shall be exempt from taxation, and may be omitted from the list herein required to be given:

First. The property of the United States and of this Territory, including school lands.

Second. The property of a county, incorporated city or village, or school district, when devoted to public use and not held or used for pecuniary profit.

Third. Public grounds, by whomsoever devoted to the public use and including all places set apart for the burial of the dead, except such as are held by any person, company or corporation with a view to profit or for the purpose of speculation in the sale thereof.

Fourth. The engine and implements used for the extinguishing of fires with the grounds used exclusively for their buildings and for the meetings of fire companies,

Fifth. The grounds and buildings of library, scientific, educational, benevolent and religious institutions, colleges or societies, devoted solely to the appropriate objects of these institutions, not exceeding ten acres in extent, and not leased or otherwise used with a view to pecuniary profit.

Sixth. The books, papers, furniture, scientific or other appar-

atus pertaining to the above institutions and used solely for the purpose above contemplated, and the like property of students in any such institutions used for the purpose of their education.

Seventh. Moneys and credits belonging exclusively to educational institutions and devoted solely to sustaining them, but not to exceed in amount of total valuation, aside from the property of students as above mentioned, the sum prescribed in their charter or act of incorporation.

Eighth. Family portraits.

Ninth. All food and fuel provided in kind for the use of the family not to exceed provisions for one year's time: *Provided*, That no person for whom a compensation for board or lodging is received or expected shall be considered a member of the family within the intent and meaning of this act.

Tenth. All pensions from the United States or from any of the states of the Union, until paid into the hands of the pensioners.

Eleventh. The polls of all active members in good standing of any regularly organized fire company, not exceeding thirty in number in cities or towns, of more than five hundred inhabitants, and not exceeding fifteen in number in towns or cities of less than five hundred inhabitants: *Provided*, That such fire company actually and in good faith possesses apparatus for the extinguishment of fires, exceeding two hundred and fifty dollers in value to be determined by the assessor of the proper county.

(6130) § **3**. All other property, real and personal, shall be subject to taxation in the manner provided in this act:

Property subject to taxation.

First. Lands and lots in towns and villages and cities, including lands bought from or donated by the United States and from the Territory and whether bought on credit or otherwise.

Second. Ferry franchises and toll bridges, which for the purposes of this act are to be considered as real property.

Third. Lands or lots which are pledged as security for debt, by mortgage or otherwise shall be assessed at their actual cash value, as follows: The amount of such incumbrance to the owner thereof. The residue of such cash value to the owner of the fee. The tax upon the incumbrance may be paid by the owner of the fee, and for the amount so paid he shall be entitled to a credit upon such debt or incumbrance together with the interest thereon at the same rate as the incumbrance bears from the date of such payment. And no contract or covenant by which the owner of the fee of any real estate agrees to pay taxes upon the incumbrance thereon, shall be of any force or effect, and every such contract and covenant shall be null and void. Should the owner of the fee fail to pay his portion of the tax before delinquent, the holder of the incumbrance may pay the same, and the amount thereof, shall be added to the incumbrance and be a part thereof and bear the same rate of interest.

Fourth. Horses and neat cattle, mules and asses, sheep, swine, and goats.

Fifth. Money, whether in possession or on deposit including bank bills.

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Sixth. All credits, whether money on hand or on deposit, property or labor due from solvent debtors, on contracts or in judgments or otherwise, whether held in this Territory or elsewhere. In making a list of the items named in this paragraph the party assessed shall furnish to the assessor the name, residence and post office address and amount of items owned by each debtor and also the present fair value of each, and a list shall be made thereof. No judgment, by default or otherwise, shall be rendered on any liquidated claim held by any person liable to taxation in this Territory until it be shown that such claim has been listed for taxation each year it was required by law to be so done, and no transfer of such claim shall be permitted to avoid or defeat this provision: *Provided*, That if such claim is held by a minor, estates of decedents, or trustees, judgment may be had thereon, if all taxes that should have been paid thereon are paid before judgment rendered. In no case shall debts owed be deducted from the value of the property required to be listed for taxation.

Seventh. Mortgages and all other securities, promissory notes and accounts, whether bearing interest or not.

Eighth. Stocks or shares in any bank or company incorprated by this Territory, or any other state or territory, and situated in or transacting business in this Territory.

Ninth. All public stocks and loans.

Tenth. All house-hold furniture, including gold and silver plate, musical instruments watches and jewelry.

Eleventh. All private libraries.

Twelfth. All pleasure carriages, stages, hacks, omnibuses, and other vehicles for transporting passengers.

Thirteenth. All wagons, carts, drays, sleighs, and every other description of vehicle or carriages, and all plows, harrows, reaping and mowing machines, harvesters, steam engines, horse powers, grain threshers and separators and all other implements, and machinery appurtenant to agricultural labor.

Fourteenth. Boats and vessels of every description, whereever registered or licensed, and whether navigating the waters of this Territory solely or not, if owned wholly or in part by persons who are inhabitants of this Territory, for the whole or part so owned by the inhabitants of this Territory.

Fifteenth. Annuities, but not including pensions from the United States or any state of the Union until it is paid into the hands of the pensioner.

Sixteenth. All manufacturies, including building, machinery, and materials.

Seventeenth. All money, goods, or property and capital employed in merchandising.

Eighteenth. All property, real and personal within this Territory, in possession of, or under control of, or held for sale by any ware-houseman, agent, factor or representative in any capacity of any manufacturer, dealer or other agent of any such manufacturer of, or dealer in agricultural implements or machinery or other goods, wares, or merchandise.

Nineteenth. Personal property of every description belonging

to persons, or companies doing freighting or transportation business and belonging wholly or in part to persons within this Territory, for such part as is owned by said person.

Twentieth. All other property, real and personal, of any kind including all improvements upon government lands, or lots not deeded.

ARTICLE 2.—MANNER OF LISTING PROPERTY.

SECTION.
1 Form for listing property, how furnished.
2 List may be extended.
3 Assessment may begin when
4. Taxable property must be listed, refusal.
5 Property of unknown owners, oath.
6 Assessor may require oath of owner or other person, penalty for refusal.
7 List of refusals.
8 Assessor's oath to assessment roll.
9 False list, perjury.
10. Definition of the term "credits"
11 Who to list property
12. Commission merchants.
13. When property listed.
14. Same in unorganized counties
15 Assessment at less than cash value a misdemeanor.
16. List in behalf of another.
17. Persons doing business in more than one county.
18. Depreciated notes and stocks, how listed
19. National bank stock assessed at par.
20. Where bank stock assessed.
21. List of stockholders to be kept, etc.
22. How tax on shares collected, lien.
23. Dividends to be held for taxes, shares sold when.

(6131) § **1**. On or before the tenth day of January of each year, the Territorial Auditor, Treasurer, and Attorney General shall provide for the use of the Assessor, suitable notices and blank forms for the listing and assessments of all property, and such instructions as shall be needful to secure full and uniform assessments and returns, and forward the same to the board of county commissioners, and such commissioners shall furnish the assessors with the same together with a list of all the entered land, in his county or district, subject to taxation. The list of taxable property assessed to each person shall contain: Form for listing property, how furnished.

First. His lands by township, range, and section and any division or part of a section or numbered fractional lot of any section lying in the county in which the list is required. And when such parcel of land is not a congressional division or subdivision it shall be listed and described in some other mode sufficient to identify it.

Second. His town lots, naming the town in which they are situated and their proper description by number and block, or otherwise, according to the system of numbering in the town.

Third. His right and title in any ferry franchise, toll bridge or part thereof, by the total and actual cash value of the same.

Fourth. Amount of capital employed in merchandising or manufacturing, including all buildings, machinery and appurtenances thereto.

Fifth. Number of horses

Sixth. Number of mules and asses.

Seventh. Number of cattle over six months old.

Eighth. Number of sheep and goats over three months old.

Ninth. Number of swine over three months old.

Tenth. Number of carriages and vehicles of every description.

Eleventh. Amount of money and list of credits, including actual cash value of all such credits, notes and accounts due.

Twelfth. Amount of taxable house-hold furniture, and musical instruments.

Thirteenth. Amount of stock or shares in any incorporated company, or company not incorporated.

Fourteenth. Amount of property, machinery or merchandise held and controlled as agent or sub-agent of any person, company or corporation.

Fifteenth. All real property sold by any party or corporation under any form of grant or conveyance or contract therefor of which the vendor had or has an inchoate contingent or equitable title, right, or claim, and which is in the name, possession or use of any vendee who has vountarily taken such grant or contracts for such title, right or claim: *Provided*, That nothing herein shall be construed so as to effect or impair any right of a person holding or claiming lands from the United States under the homestead laws.

Sixteenth. All other property not specially enumerated in this section by its actual cash value, except such as is specially exempted by section two of this chapter.

List may be extended.

(6132) § **2**. The above list of items may be extended at the discretion of the Territorial Auditor, Treasurer and Attorney General, or board of county county commissioners, so as to obtain such facts as they may deem desirable.

Assessment to begin when.

(6133) § **3**. The assessor shall in no case commence assessing before the first Monday of February of each year.

Taxable property must be listed

(6134) § **4**. All taxable property, real andpersonal, shall be listed and assessed each year in the name of the owner thereof, as soon as practicable on or after the first Monday in February, including all property owned on the first day of January of that year, and in case of stocks of goods, wares and merchandise, and the personal property of banks and banking institutions, including money loans, discounts and credits, the statement shall include the average amount of the same for the preceding year ending on January first And in order to make the assessment, such assessor shall demand from each person and firm and from the president, cashier, treasurer or managing agent of each corporation, association or company within his county, a statement under oath or affirmation of all the real estate within the county, and personal property owned by, claimed, or in the use, possession or control of such person, firm, corporation, association or company, whether held by the party sworn, for himself or as agent for another, and shall set out in such sworn statement an itemized account of all classes of property, by this act defined as subject to assessment, by him so held or controlled. If any person, firm, officer or agent shall neglect or refuse, on demand of the assessor, to give under oath or affirmation the statement required by this section, the assessor shall ascertain and estimate from the best information he can obtain, the number, amount and cash value of all the several species of property required, and shall list the same accordingly, and the

value so fixed by the assessor, shall not be reduced by the county board of equalization.

(6135) § **5.** If the owner of any property not listed by another person shall be absent or unknown to the assessor, he shall ascertain and estimate the value thereof, and if the name of such owner be known to the assessor the property shall be assessed in his, her or their name; if unknown to the assessor, the property shall be assessed to "unknown owners." The list shall be signed and sworn to by the person making it, and the oath thereto may be administered by the assessor or his deputy, or by any other officer authorized to administer oaths, and shall be certified by him, and the oath may be printed upon the blank form and shall be in substance as follows:

Property of unknown owners; oath

I, A B, do solemnly swear, (or affirm) that I have listed above and within, all the lands, town and city lots, personal property, money and credits subject by law to taxation and owned, used, possessed or controlled by me, or by law required to be listed by me for any other person or persons as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, factor, bailee or agent, according to the best of my knowledge.

(6136) § **6.** In case any person required to render the list under oath fail or refuse to do so, the assessor in order to perform his duty as required in section 6131, shall list the property of such person and as a penalty shall add fifty per cent to the actual value thereof and he may examine on oath any person whom he supposes to have knowledge in relation to the property required to be listed; and if any such person refuse to testify when so required, he shall forfeit the sum of five dollars, to be recovered in civil action in the name and to the use of the proper county; and the assessor shall make a minute of the names of persons refusing to swear to such list or to testify in relation to property, and shall note the same on the list and return the same to the board of county commissioners

Assessor may require oath of owner or other person, penalty for refusal.

(6137) § **7.** The said statements of persons refusing to swear shall be indorsed with the name of the person whose property is therein listed, and the assessors shall file them in alphabetical order, and return them to the office of the county clerk by the first Monday of May next ensuing, at which time or before he shall also prepare and deliver his assessment roll. All property is to be valued to the assessor, by the person whose duty it is to list the same, but the assessor may assess a different value on the property so listed if he is satisfied that the value so given is not correct; and the assessor shall seek to have assessed the same classes of property at a uniform value throughout the county.

List of refusals

(6138) § **8.** The assessor shall take and subscribe an oath to be certified by the officer administering it, and attach it to the assessment roll, which oath is to be in substance as follows:

Assessor's oath to assessment roll

I, A. B., county or township assessor, in and for..... county, Oklahoma Territory, do solemnly swear or affirm, that the value of all property, moneys and credits, of which a statement has been made and verified by the oath of the person re-

quired to list the same. is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount of value of the property of any person or body corporate, I have diligently and to the best means in my power endeavored to ascertain the true amount and value; and that, as I verily believe, the full value thereof is set forth in the above returns. And that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

False list, perjury

(6139) § **9**. If any person shall wilfully make or give under oath or affirmation a false list of his, her, or their taxable property, or a false list of the taxable property in the use or possession or under the control of him, her or them, and required by law to be listed by him, her or them, or place a false value thereon, such person shall be deemed guilty of perjury and upon conviction thereof, shall be punished therefor as is by law provided for the punishment of perjury.

Definition of the term "credits"

(6140) § **10**. The term "credits" as used in this act, includes every claim and demand for money, labor or other valuable thing; and every annuity or sum of money receivable at stated periods, and all moneys in property of any kind and secured by deed, mortgage or otherwise; but unpaid pensions from the United States or any state are not included in the above terms.

Who to list property

(6141) § **11**. Every inhabitant of this Territory, of full age and sound mind, unless excepted by the provisions of this act, shall list all property subject to taxation in this Territory of which he is the owner or has the control or management in the manner herein directed, but the property of a ward is to be listed by his guardian; of a minor having no other guardian, by his father if living, if not, then by his mother if living, if not, then by the person having the property in charge; of a married woman. by her husband, but if he be unable or refuse, then by herself; of a beneficiary for whom property is held in trust, by the trustee, and the personal property of a decedent, by the executor, administrator or heirs; of a body corporate, company, society or partnership, by the principal accounting officer, agent or partner; property under mortgage, or leased to be listed by and taxed to the mortgagor or lessor, unless to be listed by the mortgagee or lessee.

Commission merchants

(6142) § **12**. Commission merchants and all persons trading or dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in this Territory, are for the purpose of taxation required to list all the property in their possession.

When property listed

(6143) § **13**. All personal property is to be listed, assessed and taxed in the county where said property may be situated and kept, on the first day of January, and if the owner, his agent or person having in charge such property neglect to list it, he will be subject to the penalty hereinafter provided.

(6144) § **14**. When any personal property is situated and kept in any unorganized county of this Territory then such property shall be subject to taxation in the organized county to which it is attached for judicial purposes, and shall be listed and assessed by the assessor of said organized county, and the taxes collected therein.

Same in unorganized counties.

(6145) § **15**. If any assessor or county commissioner shall enter into any contract, agreement or understanding with the owner or his agent of any personal property, whereby and pursuant to which such property is to be assessed at less than its cash value, in consideration that the owner or owners of such property shall remove or cause to be removed said property for the purpose of taxation into the county of said assessor or commissioner, such assessor or commissioner and the owner of such property and all persons aiding or abetting such corrupt transaction and agreement shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five hundred dollars and by imprisonment in the county jail for not less than three months nor more than six months.

Assessment at less than cash value a misdemeanor.

(6146) § **16**. A person required to list property in behalf of another shall list in the same county or township in which he would be required to list it if it were his own, except as herein otherwise directed. But he must list it separate from his own, naming the person to whom it belongs. But the undivided property of a person deceased, belonging to his heirs, may be listed as belonging to such heirs without enumerating them.

List in behalf of another.

(6147) § **17**. When a person is doing business in more than one county, the property and credits existing in any one of the counties are to be listed and taxed in that county; and credits not existing in nor pertaining especially to the business in any one county are to be listed and taxed in that county where his principal place of business may be. Each individual of a partnership is liable for the taxes due from the firm.

Persons doing business in more than one county.

(6148) § **18**. Depreciated bank notes and depreciated stocks or shares in corporations or companies may be listed at their current value and rate, credits shall be listed at such sums as the person listing them believes will be received or can be collected, and annuities at the value which the person listing believes them to be worth in money.

Depreciated notes and stocks, how listed.

(6149) § **19**. That shares of stock in all national banks in this Territory, held by any person or persons, shall be assessed at their par value, and the owner or owners thereof shall be required to pay taxes thereon, the same as though they were shares in banks chartered and incorporated by the laws of the Territory, or by the laws of any state or territory of the United States: *And provided*, That for the purpose of taxation no discrimination shall be made between any national bank and any other bank doing business in this Territory under the laws thereof.

National bank stock assessed at par.

(6150) § **20**. The stock-holders in every bank located within this Territory, whether such bank has been organized under the banking laws of this Territory or any other territory or state, or of the United States, shall be assessed and taxed on the value of their

Where bank stock assessed

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shares of stock therein in the county, town, district, village or city, where such bank or banking association is located, and not elsewhere, whether such stock-holder reside in such place or not. Such shares shall be listed and assessed with regard to the ownership and value thereof as they existed on the first day of January annually, subject however, to the restriction that taxation of such shares shall not be at a greater rate than is assessed upon any other monied capital in the hands of individual citizens of this Territory, in the county, town, district, village or city where such bank is located. The shares of capital stock of national banks not located in this Territory, held in this Territory shall not be required to be listed under the provisions of this act.

List of stockholders to be kept, etc

(6151) § **21**. In each such bank there shall be kept at all times a full and correct list of the names and residences of its stockholders, and of the number of shares held by each; which list shall be subject to the inspection of the officers authorized to assess property for taxation; and it shall be the duty of the assessor to ascertain a correct list of the names and residences of all stockholders in any such bank, with the number and assessed value of all such shares held by each stock-holder and enter the same on his tax-list. The assessor shall enter the valuation of such shares in the tax-lists in the names of the respective owners of the same.

How tax on shares collected, lien.

(6152) § **22**. The officer or officers authorized to receive taxes, may all or either of them, have an action to collect the tax assessed on any share or shares of bank stock from the avails of the sale of such share or shares, and the tax against such share or shares shall be and remain a lien thereon from January first in each year until the payment of said tax.

Dividends to be held for taxes, shares sold when

(6153) § **23**. For the purpose of collecting such taxes it shall be the duty of every such bank, or the managing officer or officers thereof, to retain so much of every dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes levied upon their shares of stock respectively until it shall be made to appear to such bank or its officers, that such taxes have been paid; and any officer of any such bank who shall pay over or authorize paying over of any such dividend or dividends or any portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the collector of taxes where said bank is located, shall sell said share or shares to pay the same like other personal property, and in case of sale, the provisions of law in regard to the transfer of stock when sold on execution shall apply to such sale,

ARTICLE 3.—RAILROADS. Chap. 75.

SECTION.
1. How assessed
2 To furnish list of property under oath.
3. Annual statement, shall contain, what, when made.
4 Right of way, description of.
5. Tracks, valuation and assessment.
6 Rolling stock held to be personal property, schedule
7. How listed and taxed.
8. Tools, materials, etc., where listed.
9. How other personalty and realty to be assessed.
10. Returns to Auditor.
11. Neglect to return.
12 Railroad tax-book, extending and collecting tax.
13 Description of platted land.
14. County clerks shall furnish plats, etc.

How assessed

(6154) § **1**. The property of railroads and railroad corporations shall be assessed annually in the manner prescribed in this act.

To furnish list of property under oath.

(6155) § **2**. Every person, company or corporation owning operating or constructing a railroad in this Territory, shall return sworn lists or schedules of the taxable property of such railroad as hereinafter provided. Such property shall be listed and assessed with reference to the amount, kind and value on the first day of January of the year in which it is listed. Such report shall be made out and sworn to to by the local superintendant of the railroad company having under his direction the road to be assessed, or the same may be made out and sworn to by any officer of the railroad company, designated by the company as a person having full and complete knowledge of the facts to be so reported.

Annual statement. shall contain what, when made.

(6156) § **3**. They shall in the month of January of the year 1891, and at the same time in each year thereafter, when required, make out and file with the county clerks of the respective counties in which the railroad may be located, a statement or schedule showing the property held for right of way and the length of the main track and all side and second tracks and turnouts in such county, and in each city, town and village in the county, through or into which the road may run, showing the number of ties in the track per mile, the weight of iron or steel per yard, used in the main and side tracks, what joints or chairs are used in the track, the ballasting of the road, whether gravel or dirt, the number and quality of building or other structures on railroad track, the length of time iron in the track has been used, and the length of time the road has been built. And describing each tract of land other than a city, town or village lot, through which the road may run, in accordance with the United States surveys, giving the width and length of the strip of land held in each tract, and the number of acres thereof; They shall also state the value of improvements and stations located on the right of way. New companies shall make such statement in January next after the location of their roads. When such statement shall have been once made, it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the county board, but the company shall, during the month of January, annually report the value of such property by the description set forth in the next section of this act, and note all additions and changes in such right of way as shall have occurred.

Right of way, description of.

(6157) § **4**. Such right of way, including the super-structures of main, side or second tracks and turnouts, and the stations and improvements of the railroad company or such right of way, shall be held to be real estate for the purpose of taxation, and denominated "railroad track' and shall be so listed and valued and shall be described in the assessment thereof as a strip of land extending on each side of the center of such railroad track, and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses the boundary line in entering the county, city, town or village and extending to the point where such track crosses the boundary line leaving such county, city, town or village, or to the point of termination in the same, as the case may be, containing———acres, more or less; (inserting name of county, township, city, town or village,) boundary line of same, and the number of acres and length in feet, and when advertised or sold for taxes no other description shall be necessary.

Tracks, valuation and assessment

(6158) § **5**. The value of the railroad track, side or second tracks, all turnouts and stations houses, depots and machine shops or other building belongings to the road shall be listed and assessed by the assessor in the several townships, villages, districts and cities in which they are located, the railroad track, to be assessed at its fair value per mile for the number of miles or fraction of miles there may be in the respective towns, villages, districts, townships or cities within the county. In arriving at the value of the property so to be assessed, the assessor shall consider the the report made by the company as in this act provided, and shall then view and assess the property at the fair cash value thereof, whether that be higher or lower than the value shown in such report. Such assessments shall be subject to review before the board of equalization as in other cases.

Rolling stock held to be personal property, schedule.

(6159) § **6**. The movable property belonging to a railroad company shall be held to be personal property and denominated, for the purpose of taxation "rolling stock." Every person, company or corporation owning, constructing or operating a railroad in this Territory, shall in the month of January annually, return a list or schedule, which shall contain a correct detailed inventory of all the rolling stock belonging to or leased by such company, and which shall distinctly set forth the number of locomotives of all classes, passengers cars of all classes, sleeping and dining cars, express cars, baggage cars, house cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars and all other kinds of cars.

How listed and taxed

(6160) § **7**. The rolling stock shall be listed and taxed in the several counties, towns, villages, districts and cities in the proportion that the length of the main track used or operated in such county, town, village, district, or city bears to the whole length of the road used or operated by such person, company or corporation, whether owned or leased by him or them in whole or in part. Said list or schedule shall set forth the number of miles of main track on which said rolling stock is used in the Territory of Okla-

homa, and the number of miles of main track on which said rolling stock is used elsewhere.

Tools, materials, etc., when listed

(6161) § **8.** The tools and materials for repairs and all other personal property of any railroad, except rolling stock, shall be listed and assessed in the county, town, village, district, or city wherever the same may be on the first day of January. All real estate, including the stations and other buildings and structures thereon, other than that denominated "railroad track" belonging to any railroad shall be listed as lands or lots, as the case may be, in the county, town, village, district or city where the same are located.

How other personalty and realty to be assessed.

(6162) § **9.** The county clerk shall return to the assessor, a copy of the schedule or list of the real estate, including railroad track, and of the personal property, except rolling stock pertaining to the railroad; and such real estate and personal property shall be assessed by the assessor. Such property shall be treated in all respects, in regard to assessment and equalization, the same as other similar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms "lands," "lots" and personal property.

Return to auditor

(6163) § **10.** At the same time that the lists or schedules are hereinbefore required to be returned to the county clerk, the person, company or corporation running, operating or constructing any railroad in this Territory shall return to the Auditor of of public accounts, sworn statements or schedules as follows:

First. Of the property denominated "railroad track," giving the length of the main and side or second tracks and turnouts, and showing the proportions in each county, and the total in the Territory.

Second. The rolling stock, giving the length of the main track in each county, the total in this Territory, and the entire length of the road.

Third. A statement or schedule showing:

First. The amount of capital stock authorized, and the number of shares into which such capital stock is divided

Second. The amount of capital paid up.

Third. The market value, or if no market value, then the actual value of the shares of stock.

Fourth. The total amount of all indebtedness, except for current expenses for operating the road.

Fifth. The total listed valuation of all its tangible property in this Territory.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of public accounts.

Neglect to return.

(6164) § **11.** If any person, company or corporation, owning operating or constructing any railroad, shall neglect to return to the county clerks, the statements or schedules required to be returned to them, the property so to be returned and assessed by the assessor shall be listed and assessed as other property. In case of failures to make returns to the Auditor, as hereinbefore provided, the Auditor, with the assistance of the county clerks

and assessors, when he shall require such assistance, shall ascertain the necessary facts. In case of failure to make said statements, either to the county clerk or Auditor, such corporation, company or person shall forfeit, as a penalty, not less than one thousand nor more than ten thousand dollars for each offense, to be recovered in any proper form of action, in the name of the Territory of Oklahoma, and paid into the Territorial treasury.

Railroad tax book, extending and collecting tax.

(6165) § **12**. The county clerk shall procure, at the expense of the county, a record book, properly ruled and headed, in which to enter the railroad property of all kinds, as listed for taxation and shall enter the valuations as assessed, corrected and equalized in the manner provided by this act; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. And at the proper time fixed by this act for the delivering tax-books to the county treasurer, the clerk shall attach a warrant under his seal of office, and deliver said book to the county treasurer, upon which the said county treasurer is hereby required to collect the taxes therein charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the treasurer and be filed in the office of the county clerk for future use.

Description of platted land.

(6166) § **13**. When any railroad company shall make or record a plat of any contiguous lots or parcels of land belonging to it, the same may be described as designated on such plat.

County clerk shall furnish plat, etc

(6167) § **14** It shall be the duty of the county clerks in the various counties of this Territory, on or before the first day of December of each year, to deliver to some station agent of each railway company passing through or into such county, a plat showing what sections or parts thereof are embraced within the corporate limits of the towns, school-townships, or assessment-districts within his county and through which railway passes, and the railroad company shall conform their report to the divisions indicated on the plat so furnished.

ARTICLE 4.—TELEGRAPH AND TELEPHONE LINES.

SECTION.
1. Sworn list of property to be made out.
SECTION.
2. Failure to make statement, penalty.

Sworn lists of property to be made out.

(6168) § **1**. Any person, company or corporation owning or operating any telegraph or telephone lines within the Territory shall return sworn lists or schedules of the taxable property of said telegraph or telephone companies, to the Auditor of the Territory and the county clerk of the counties through which such telegraph or telephone lines are so constructed or operated as hereinafter provided, such property shall be listed and assessed with reference to the amount, kind and value on the first day of January of the year in which it is listed; such report shall be made out and sworn to by the local superintendant of the telegraph or telephone company having under his control the property to be assessed, or the same may be made out and sworn to by any officer of the tele-

graph or telephone company, designated by the company as a proper person having full and complete knowledge of the facts to be so reported.

Failure to make statement, penalty

(6169) § **2.** If any person, company or corporation, owning, operating or constructing any telegraph or telephone lines, shall neglect to return to the Auditor of the Territory or the county clerks, the statements or schedules required to be returned to them, the property so to be returned and assessed by the assessor shall be listed and asssessed as other property. In case of a failure to make returns to the Auditor as hereinbefore provided, the Auditor with the assistance of the county clerks, (when he shall require such assistance) shall ascertain the necessary facts; in the case of a failure to make said statements to the Auditor of the Territory, and county clerks, such person, company or corporation shall forfeit as a penalty not less than five hundred nor more than five thousand dollars for each offense, to be recovered in any proper form of action, in the name of the Territory of Oklahoma and paid into the Territorial treasury,

ARTICLE 5.—ASSESSMENT ROLL.

SECTION.
1. Assessors to make out assessment roll.
SECTION
2. Returns of refusal to swear to property listed, proviso.

Assessor to make out assessment roll

(6170) § **1.** On or before the first Monday of May annually, the several county or township assessors shall make out and deliver to the county clerks an assessment roll consisting of the following items, to-wit:

A list of all taxable lands in such county, in numerical order, beginning with the lowest numbered section in the lowest numbered township, in the lowest numbered range in the county, and ending in the highest numbered section, township and range, with the number of acres in each tract set opposite the same in the column provided for that purpose, and the assessed value thereof in another column with the columns of acres and values footed up; also stating the number of the school and road districts in which such property and the owners thereof, is situated. Such list shall be, as nearly as practicable, in the following form, to-wit:

RETURN OF TAXABLE LANDS IN.....COUNTY, OKLAHOMA TERRITORY AS ASSESSED FOR THE YEAR 18....

Part of Sec.	Section.	Tp.	Range.	Acres.	Value per A.	Total. value.	Owners name.

A list of all the town lots in each town or city in each county, in like numerical order, with the valuation of each lot or part of

Chap. 75. lot and the name of the person listing the same opposite, with the column of values footed up substantially in the following form:

RETURN OF LOTS IN THE CITY (OR TOWN) OF.....IN.....COUNTY, OKLAHOMA TERRITORY, ASSESSED FOR THE YEAR 18....

BLOCK.	LOT.	VALUE.	OWNER.

A list in alphabetical order of all the persons and bodies corporate in whose names any property or anything taxable other than the real estate has been listed together and in what school and road district the owner thereof resides, or if the owner be a non-resident of the Territory, then the school and road district where the chattel property is located, with a sufficient number of columns opposite each name in which to enter the numbers or values or both, of the several species of property or other interests required by law to be listed, with the columns of numbers and values footed up. Such lists shall be as nearly as practicable in the following form to-wit:

RETURN OF PERSONAL PROPERTY IN....COUNTY, OKLAHOMA TERRITORY ASSESSED FOR THE YEAR 18.....

NAMES.	Merchandise.	Manufactures.	Horses.	Value.	Mules and Asses.	Value.	Value.	Cattle.	Value.	Value.	Sheep.	Value.	Value.	Swine.	Value.	Value.	Carriages.	Value.	Value.	Money and Credits.	Value.	Household Furniture.	Stocks or Shares.	Other Personalty.	Total.	Poll Tax.	REMARKS.

Return of refusals to swear to property listed, proviso

(6171) § **2.** In every case where a person is required to list property for himself or in behalf of another, if he shall neglect or refuse to list the same the assessor shall proceed as directed in section 6136 and in return of personal property, opposite the name of such person, he shall write the words "by the assessor" when the list was made by himself or his deputy, together with the words "absent," or "sick," or "refused to swear," or such other words as will express the cause why the person required to make the list did not make it; and a neglect to make it shall be taken as a refusal to do so: *Provided*, That if any party, from any good cause, without fault on his or her part fails to list to the assessor at the time of assessment any property which such party should have

listed or fail to list the same as fully as it should have been done such party shall furnish such list, or corrected list, to the board of equalization on or before the first day of the meeting thereof.

ARTICLE 6.—COUNTY BOARD OF EQUALIZATION.

SECTION.
1. Powers of, limitation.
2. Further powers of board
3. Clerk of the board.
4. Abstract of assessment roll to be sent to Territorial Auditor.

Powers of limitation.

(6172) § **1**. The board of county commissioners of each county shall constitute a board of equalization for the county, and said board or a majority of the members thereof, shall hold a session of not less than two days at the county seat, commencing on the first Monday of July in each year, for the purpose of equalizing and correcting the assessment roll in their county, and in order to equalize and correct such assessment roll they may change the valuation and assessment of any property real or personal, upon the roll by increasing or diminishing the assessed valuation thereof as shall be reasonable and just, to render taxation uniform: *Provided*, That the aggregate assessment shall not be thereby materially changed.

Further powers of board.

(6173) § **2**. The said board of equalization must also place upon and add to the assessment roll any property, real or personal, subject to taxation, which has been ommitted therefrom by the owner or by the assessor, and enter for the same a reasonable, just and uniform taxation. During the session of said board, any person or his attorney or agent, feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any alleged errors in the listing or valuation of his property. whether real or personal, and the board may correct the same as shall be just, and if any person returned as failing or refusing to render a list or to be sworn thereto, or to the list of the property of another returnable by him, can show good cause for such failure or refusal, the penalty herein provided may be remitted: *Provided*, That in equalizing the assessment all property, personal or real, said board must be governed by the value of such property on the first day of January preceding, of if that cannot be reasonably and justly ascertained by its average value during the year preceding.

Clerk of the board

(6174) § **3**. The county clerk of the county shall be clerk of said board of equalization for the county.

Abstract of assessment roll to be sent to Territorial Auditor.

(6175) § **4**. As soon as practicable after the assessment rolls are equalized and corrected, as provided in the two preceding sections, and before the third Monday in July next ensuing, the county clerk shall make out an abstract thereof containing:

Whole number of acres of land listed in the county and the total value thereof.

Total valuation of town lots.

Amount of property invested in merchandise.

Amount of property invested in manufactures.

Number of horses and their total value.
Number of mules and asses and their total value:
Number of cattle and their total value.
Number of sheep and their total value.
Number of swine and their total value.
Number of carriages and vehicles of every kind and their total value.
Total value of money and credits.
Total value of household furniture.
Total value of stocks or shares.
Total value of all other personalty not enumerated under the foregoing heads, and
Number of polls.

Which abstract the clerk is directed to transmit without delay to the Auditor of the Territory and the county commissioners are authorized to direct the clerk to add to the above list of items such other items as they may deem advisable. And it shall be the duty of the Auditor of the Territory to furnish such forms for the use of the county commissioners, assessors, clerks and other officers of the revenue, as shall secure uniformity of proceedings and returns throughout the Territory.

ARTICLE 7.—TERRITORIAL BOARD OF EQUALIZATION.

SECTION.
1 How constituted, duties.

How constituted, duties.

(6176) § **1**. The Governor, Territorial Auditor and Secretary, shall constitute the Territorial board of equalization, and said board of equalization shall hold a session at the capital of the Territory, commencing on the first Monday of August of each year; and it shall be the duty of said board to examine the various county assessments and to equalize the same, and to decide upon the rate of Territorial tax to be levied for the current year, together with any other general or special Territorial taxes required by the law to be levied, and to equalize the levy of such taxes throughout the Territory. And shall therefrom find the percentage that must be added to or deducted from the assessed value of each county, and shall then order the percentage so found to be added to or subtracted from the assessed values of each of the various counties of the Territory, and shall notify the various county clerks of the percentage so ordered to be added to or subtracted from the valuation of property iu their respective counties. It shall then be the duty of the various county treasurers to add to or deduct from the total value of the property assessed to each party the percentage so ordered and collect the taxes accordingly.

SECTION
1. Limitation of taxes.
2. Auditor to transmit rate of Territorial taxes.
3. County tax, when levied.
4. Territorial tax three mills, when.
5. County clerk to make out tax list.
6. Duplicate tax list for treasurer, taxes due when.
7. Form of list and duplicate.
8. Entry to be made on tax list and duplicate.

(6177) § **1**. The rate of the general Territorial tax shall not be less than one-half mill nor more than three mills on the dollar valuation, and one-half mill each year for the erection and support of a Territorial Normal School, and one-half mill each year for the erection and support of a Territorial University, the rate for ordinary county revenue. including the support of the poor, not more than six mills on the dollar; for roads and bridges, a poll tax of four dollars, or four days work, or two days work by man and team, on every male persons between the ages of twenty-one and fifteen years; a road and bridge tax not to exceed five mills on the dollar valuation, to be paid in money and the certificate of the road over-seer, that the person named therein has actually performed eight hours labor for each day's work so certified shall be received by the county treasurer in discharge of said poll tax, to the amount so certified; for the county sinking fund, such rate as in the estimation of the board of county commissioners will pay one year's interest on all the outstanding debt of the county, with ten per cent on the principal. Limitation of taxes.

(6178) § **2**. On or before the third Monday in August in each year, the Territorial Auditor is required to transmit to the county clerk of each county, a statement of the rate of taxation required in said county for the general Territorial tax as directed to be levied and collected by the Territorial board of equalization. Should the Territorial board of equalization fail to fix the rate of taxation in any or all of the counties, then the Auditor is required to notify the county clerk of the rate to be levied and collected in such county or counties, which must not exceed two mills on the dollar of valuation and must be in even mills and tenths of mills, and uniform for all the counties. Auditor to transmit rate of Territorial tax.

(6179) § **3**. On the first Monday of September of each year, the board of county commissioners must meet in the county seat to levy the necessary taxes for the current fiscal year, and they may levy the taxes at any time after the said first Monday of September if the statement from the Territorial board of equalization has not then been received, but such levy must not be postponed for more than ten days; and they shall levy the taxes as herein directed. County tax, when levied

(6180) § **4**. The rate of general Territorial tax shall be as directed by the Territorial board of equalization or by the Territorial Auditor; but in case the statement of levy of such taxes as hereinbefore directed has not been received by the county clerks within ten days after the said first Monday in September, then the said board of county commissioners shall levy the gen- Territorial tax, three mills when.

eral Territorial tax at the rate of three mills on the dollar of valuation.

County clerk to make out tax list.

(6181) § **5**. As soon as practicable after the taxes are levied, the county clerk shall make out a list containing:

First. A list in alphabetical order of all the persons and bodies corporate in whose name any property other than real estate has been listed, with the amount of valuation thereof in a separate column opposite the name, and total amount of all the taxes carried out in another column.

Second. A list of all taxable lands in the county, (not including town lots) in numerical order, commencing with the lowest numbered section in the lowest numbered township in the lowest numbered range in the county, and ending with the highest numbered section, township and range, with the names of the persons or parties in whose name each sub-division was listed opposite each sub-division on the margin, or in a column provided for that purpose, with valuation of each tract, and several species of taxes and the total of all the taxes carried out in separate columns opposite each tract in the same manner as provided in the alphabetical list of names.

Third: A list of the city or town lots in each city or town in the county, commencing with the lowest numbered and ending with the highest numbered in each city or town, with the name of the person or party, listing each lot or part of lot opposite the same, and the valuation of several species of taxes and total taxes carried out in seperate columns in the same manner as hereinbefore provided in respect to personal property and lands.

Fourth: Such tax list shall also specify the years for which any of the real estate described therein, has been sold for taxes and not redeemed.

Dupilcate tax list for treasurer, taxes due when.

(6182) § **6**. The tax list when completed shall be kept by the county clerk as the property of the county. The clerk shall also prepare a duplicate of the tax list of his county and deliver the same to the county treasurer on or before the first day of November following the date of the levy for the current year. And the taxes for such year shall be due and receivable from and after that date.

Form of list and duplicate.

(6183) § **7**. The tax list and duplicate shall be as nearly as practicable in the following form to-wit:

TAX LIST FOR 18....,.....COUNTY, OKLAHOMA TERRITORY Chap. 75.

NAMES.	Part of Section.	Section.	Township.	Range.	Acres.	Value.	Name of Town.	Lot.	Block.	Value.	Personalty.	Territorial Tax.	County Tax.	County Sinking Fund.	Land Road Tax.	Poll Tax.	District School Tax.	Total.	REMARKS.

(6184) § **8.** An entry is required to be made upon the tax list and its duplicate, showing what it is and for what county and year it is, and the county commissioners shall attach to the lists their warrants under their hand and official seal, in general terms requiring the treasurer to collect the taxes therein levied according to law, and no informality in the forgoing requirements shall render any proceedings for the collection of taxes illegal. Entry to be made on tax list and duplicate.

The county clerk shall take the receipt of the county treasurer on delivering to him the duplicate tax list with the warrant of the county commissioners attached, and such list shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained.

ARTICLE 9,—COUNTY TREASURER'S DUTIES.

SECTION.
1. County treasurer collector of taxes
2. Warrants receivable to fund drawn on.
3 Duplicate receipts shall be made out.
4. Form of receipt.
5. County clerk to audit duplicate, failure of treasurer to collect full amount.
6. Receipts must be numbered consecutively.
7. Duplicate shall contain what.
8. Treasurer must keep cash book.
9. Money received from license, fines, etc.
10. Form of cash book.
11. County clerk to keep duplicate of cash book.
12. Errors and omissions in assessment roll or tax list, remedy in.
13. No demand for taxes necessary.

(6185) § **1.** The county treasurer of each county shall attend at the county seat at all times to receive the taxes not yet paid, and he is also authorized and required to collect, so far as practicable, the taxes remaining unpaid on the list of the former year or years. In all cases where taxes are paid he shall give a receipt to the person paying the same. County treasurer collector of taxes

Warrants receivable to fund drawn on.

(6186) § **2.** Territorial warrants are receivable for the amount payable into the Territorial treasury on account of the general Territorial tax, the county warrants are receivable at the treasury of the proper county for the amount of county tax payable into the county treasury, except when otherwise provided by law; and city warrants shall be receivable for city taxes; and school warrants shall be received for school taxes in the district where such warrants are issued; but United States Treasury notes or their equivalent only are receivable for such taxes as are or may be required by law to be paid in cash; and road and poll taxes may be discharged as provided in section 6176.

Duplicate receipts shall be made out.

(6187) § **3.** Whenever any taxes are paid to the county treasurer, the treasurer shall make out duplicate receipts for the same, which duplicate receipts shall correspond in number, date, amount and in every respect shall be precise copies of each other, one of which shall be delivered to the person paying such taxes, and the other shall, on the same day, be filed by the treasurer with the county clerk, and such duplicate receipts shall specify the land or other property on which such tax was assessed according to its description on the tax duplicate, or in some sufficient manner, and shall also specify the amount of each separate and distinct funds in separate or distinct lines or columns, and whether the said separate or distinct funds were paid in cash or Territorial warrants, county or road orders, or road overseer receipts as the case may be. Such duplicate receipts shall also specify the years for which any of the real estate described therein has been sold for taxes and not redeemed.

Form of receipt.

(6188) § **4.** The tax receipt and duplicate shall be substantially in the following form to-wit:

TREASURER'S OFFICE.....COUNTY, OKLAHOMA TERRITORY.

Received of ....,....dollars in full of the following taxes for the year 18...., on annexed property and real estate.

Part of Sec. or name of town.	Section or lot.	Town or block	Range or lot.	Acres or block.	Total valuation
Personal property.					

AMOUNT OF TAXES.

Kind of tax.	Mill rate	Paid in cash.	Paid in warrants.	Interest.	Total tax.
Territorial					
County					
Road					
Poll					
School					
Advertising					

County clerk to audit duplicate, failure of treasurer to collect full amount.

(6189) § **5.** It shall be the duty of the county clerk on receiving any duplicate tax receipt from the treasurer forthwith to examine the same and compare it with the tax list in his possession, and see if the total amount of taxes and the several amounts of the different funds are correctly entered and set forth in such receipt, and in case it shall appear that the treasurer has not collected the full amount of taxes and interest which according to the tax list and terms of the receipt he should have collected, then the county clerk shall forthwith charge the treasurer with the amount such receipt falls short of the true amount, and the treasurer shall be liable on his official bond to account for and pay over the same.

Receipts must be numbered consecutively.

(6190) § **6.** All tax receipts issued by the county treasurer shall be numbered consecutively, commencing with number one on the first receipt issued for the taxes of any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year for which the same have been levied and assessed in this Territory.

Duplicate shall contain what.

(6191) § **7** Whenever any taxes are paid the treasurer shall write upon the tax duplicate, opposite the description of the real estate or property whereon the same were levied, the word "paid", together with the date of such payment and the name of the person paying the same, and the county clerk on receiving the duplicate receipt, shall forthwith make the same entries on the tax list in his possession.

Treasurer must keep a cash book.

(6192) § **8.** The county treasurer is required to keep a cash book in which he shall enter an account of all money by him received, specifying in proper columns provided for that purpose, the date of the payment, the number of the receipt issued therefor, by whom paid, and on account of what fund or funds the same was paid, whether Territorial, county, school, road, sinking fund, or otherwise, and the amount paid in warrants, orders or receipts. each in a separate column, and the total amount for which the receipt was given in another column; and the treasurer shall keep his account of money received for and on account of taxes separate and distinct from moneys received on any other account, and shall also keep his account of money received for and on account of taxes levied and assessed for any one year separate and distinct from those levied and assessed for any other year, and all entries in said cash book of money received for taxes shall be in the numerical order of the receipt issued therefor.

Money received from licenses, fines, etc.

(6193) § **9.** Whenever the Treasurer receives any money, warrants or orders on account of licenses, fines or any other account, except taxes charged on the tax duplicate, he shall make out and deliver to the person paying the same, duplicate receipts, one of which receipts said person shall forthwith deposit with the county clerk in order that the Treasurer may be charged with the amount thereof. The Treasurer shall then enter the same in his cash book as in case of money received for taxes, but in a separate and distinct series of numbers of receipts issued therefor; and no person shall receive such license or be discharged from obliga-

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tion by reason of such fine on account until he shall have so delivered such duplicate receipt to the county clerk, and the Treasurer shall so inform the person making the payment at the time of payment.

Form of cash book.

(6194) § **10**. The cash book provided for in section 6192 shall be as nearly as practicable in the following form, to-wit;

TREASURER'S CASH BOOK.....COUNTY, OKLAHOMA TERRITORY.

Date.	Number of Receipts.	By Whom Paid.	Poll Fund.		Land Road Fund.			Co. Sinking Fund.		County Fund.		Territorial Fund.		District School Fund.	Advertising Fees.	Total.
			Paid in Receipts.	Paid in Warrants.	Paid in Cash.	Paid in Warrants.	Paid in Receipts.	Paid in Cash.	Paid in Warrants.	Paid in Cash.	Paid in Warrants.	Paid in Cash.	Paid in Warrants.			

County clerk to keep duplicate cash book.

(6195) § **11**. The county clerk is required to keep a duplicate of the treasurer's cash book, and to enter therein all duplicate receipts by him received from the treasurer in the same manner and form as the treasurer is required to enter the same.

Errors and omissions in assessment roll or tax list, remedy in.

(6196) § **12**. If on the assessment roll or tax list, there be any error in the name of the person assessed or taxed, the name may be changed and the tax collected from the person intended, if he be taxable, and can be identified by the assessor or treasurer; and when the treasurer, after the tax list is committed to him, shall ascertain that any land or other property is omitted, he shall report the fact to the county clerk, who upon being satisfied thereof, shall enter the same upon his assessment roll and assess the value, and the treasurer shall enter it upon the tax list and collect the tax as in other cases.

No demand for taxes necessary

(6197) § **13**. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation under this law to attend the treasurer's office at the county seat and pay his taxes; and if any person neglect so to attend and pay his taxes until after the first Monday of February next succeeding the levying of the taxes, the treasurer is directed and required to collect the same by distress and sale, and he may deputize some suitable person so to do: *Provided*, That in case any person having only personal property assessed and upon which the taxes are unpaid, shall in the opinion of the treasurer be about to move out of the county, it shall be the duty of the treasurer to collect such taxes at any time after the tax duplicate has been placed in his hands: *Provided, however*, That in case any person owing taxes removes from any county in this Territory, the county treasurer shall forward such tax claim to the treasurer of the county to which such

person has removed, and such taxes shall be collected by the county treasurer of the latter place as other taxes and returned to the proper county, less legal charges. Chap. 75.

ARTICLE 10.—DELINQUENT TAXES.

SECTION.
1. When delinquent, penalty
2. Lien of taxes defined
3. How collected.
4. Duty of sheriff.
5. Duty of county treasurer in case of tax warrants.
6. Sheriff's fees.
7. Failure of treasurer or sheriff to issue tax warrants, penalty.
8. When lien on realty; provisions for collecting.
9. Notice of sale for taxes
10. Lands offered for sale
11. Method of sale, parcels.
12. Failure of bidders to pay, lands again offered.
13. Returns of the sale.
14. Description entered numerically, form.
15. Purchaser is entitled to a certificate.
16. Fee for deed.
17. Erroneous sales corrected.
18. County treasurer may purchase when.
19. Redemption
20 Treasurer may sell certificate.
21. Certificate of purchase issued to county
22. Certain taxes not payable.
23. Redemption of lands sold for taxes.
24 Undivided lands.
25 Tax deed when given, effect.
26. Tax deed, when given, form of, validity.
27. Limitation of action to recover land.
28. Tax sale not voidable.
29. Certificate delivered for deed
30. Judgment required for taxes due.

When delinquent, penalty.

(6198) § **1**. On the first Monday of February of the year after which taxes shall have been assessed, all unpaid taxes shall become delinquent. To all taxes after delinquent, there shall be added as a penalty one per cent on the amount thereof, on the first day of each month for the first three months, and two per cent a month to be added on the first day of each month for the second three months after delinquent, and five per cent per month shall be added on the first day of each month thereafter until the taxes are satisfied.

Lien of taxes defined

(6199) § **2**. Taxes upon real property are hereby made a perpetual lien. Taxes due from any person upon personal property, and unpaid for the two years last past, shall be a lien on any real property owned by such persons in the county where the land is located, or in a county to which unpaid taxes have been certified before the holder of the land has sold the same.

How collected.

(6200) § **3**. All taxes on personal property that shall remain due and unpaid on the first Monday of February may be collected in the following manner: the county treasurer shall between the tenth and twentieth days of February issue a warrant under his hand directed to the sheriff of the county commanding him to levy the amount of such unpaid taxes and the penalty thereon, together with his fees for collecting the same, of the goods and chattels of the persons to whom such taxes were assessed and to pay the same to the county treasurer and return such warrant within sixty days from the date thereof.

Duty of sheriff.

(6201) § **4**. It shall be the duty of the several sheriffs of this Territory, in making their returns of the delinquent tax warrants to the treasurer of their respective counties, to note in their return the county to which any such delinquent tax-payer may have removed or resides with the date of his removal if he shall

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be able to ascertain such fact, and it is hereby made his duty to make diligent inquiry therefor.

Duty of county treasurer in case of tax warrants

(6202) § **5**. It shall be the duty of the several county treasurers in the Territory, immediately after their receiving said warrants, returned as provided in the preceding section, to issue an "alias" tax warrant directed to the sheriff of any county in this Territory into which any such tax payer may have removed or may reside, or in which his personal property may be found, who shall proceed to collect said taxes the same as upon execution, together with his costs upon the same, and after collecting the said taxes, to forward the same to the Treasurer of the county who issued said warrant, together with the warrant and his return endorsed thereon.

Sheriff's fees

(6203) § **6**. For the services specified in the preceding sections the sheriff shall be entitled to the same fees as they are allowed by law on execution.

Failure of treasurer or sheriff to issue tax warrants, penalty.

(6204) § **7**. All warrants returned by the sheriff shall be endorsed with the date of service, date of collection and amount collected, and if no property is found, so state; and if any treasurer or sheriff fail to issue or serve and return the warrants as provided by this act, such treasurer or sheriff shall be held liable for the amouut of tax upon which warrants have so failed to be issued, served or returned.

When lien on realty, provisions for collecting

(6205) § **8**. The treasurer shall in all cases where taxes are a lien on real property and unpaid on August 15th of each year, proceed to advertise and sell such real estate for such taxes and costs as hereinafter provided, and shall not be bound before so doing to proceed to collect by a sale of personal property, taxes on personal property which are by this act made a lien on realty; but shall include such personal tax with that due on the realty, and sell the realty for all said taxes.

Notice of sale for taxes.

(6206) § **9**. The treasurer shall give notice of the sale of real property by publication thereof once a week for three consecutive weeks, commencing the first week in September preceding the sale, in the official newspaper in his county and if there be no paper published in his county, he shall give notice by written or printed notice posted on the door of the court house or building in which courts are commonly held, or the usual place of meeting of the county commissioners, for three weeks previous to the sale; such notice shall contain a notification that all lands on which the taxes of the preceding year (naming it) remain unpaid will be sold, and the time and place of the sale; and said notice must contain a list of the lands to be sold and the amount of taxes due. The county treasurer shall charge and collect in addition to the taxes and interest and penalty, the sum of twenty-five cents on each tract of real property and ten cents on each town lot advertised for sale, which sum shall be paid into the county treasury and the county shall pay the cost of the publication, but in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising.

Lands offered for sale

(6207) § **10**. On the first Monday of October in each year, between the hours of nine o'clock A. M. and four P. M. the treas-

urer is directed to offer at public sale at the Treasurer's office where by law the taxes are made payable, all lands, town lots or other real property which shall be liable for taxes of any description for the preceding year or years, and which shall remain due and unpaid, and he may adjourn the sale form day to day until all the lands, lots or other real property have been offered, and no taxable property shall be exempt from levy and sale for taxes.

Method of sale, parcels.

(6208) § **11**. The person who offers to pay the amount due on any parcel of land for the smallest portion of the same is to be considered the highest bidder, and when such a portion constitutes a half or more of the parcel it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided in such case lengthwise by a line parallel with the proper lines of the lots. If the portion taken be less than one-half of the parcel, it is to be taken from the southeast corner in a square form, as nearly as the form of the land will conveniently permit.

Failure of bidders to pay, lands again offered

(6209) § **12**. Should any person so bidding fail to pay the amount due, the treasurer may again offer the land for sale if the sale has not closed, and if it has closed he may again advertise it specially and by description by one written or printed notice posted for two weeks on the front door of the court house or place where courts are usually held, after which it may be sold at public sale; or the treasurer may recover the amount so bid by civil action brought in the name of the county in which the sale was held.

Returns of the sale.

(6210) § **13**. On or before the first Monday of November following the sale of real property, the treasurer is required to file in the office of the county clerk of his county a return of his sale of land, retaining a copy in his office, showing the lands sold, the names of the purchasers and the sums paid by them, and also a copy of the notice of sale with a certificate of the advertisement verified by an affidavit, and such certificate shall be evidence of the regularity of the proceedings.

Description entered numerically, form.

(6211) § **14**. The description of real estate in such returns shall be entered in the same numerical order as required in the tax list, and such returns shall be as nearly as may be in the following form to-wit:

TREASURER'S SALE BOOK. DELINQUENT TAXES OF 18.....COUNTY, OKLAHOMA TERRITORY.

Date of Sale.	Part of Section or Name of Town.	Section or Lot.	Town or Block.	Range or Lot.	Acres or Block.	Name of Purchaser.	Amount Sold For.	Subsequent Taxes Paid.	Total.	By Whom Redeemed.	Amount Paid for Redemption.	Redemption Money.	Remarks.

Purchaser is entitled to a certificate

(6212) § **15.** The purchaser of any tract of land sold by the county treasurer for taxes will be entitled to a certificate in writing describing the land so purchased and the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be assignable and said assignment must be acknowledged before some officer having power to take acknowledgment of deeds, such certificate shall be signed by the treasurer in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires the lien of the tax on the land and if he subsequently pays the taxes levied on the same, whether levied for one year or years, previous or subsequent to such sale, he shall have the same lien for them and may add them to the amount paid by him in the purchase, and the treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in such certificate the same as in other cases, and shall write thereon, "sold for tax at public sale." Such certificate shall be substantially in the following form:

COUNTY TREASURER'S CERTIFICATE OF TAX SALE.

THE TERRITORY OF OKLAHOMA. } ss.
.....COUNTY. }

I, ..., Treasurer of the county of..... in the Territory of Oklahoma, do hereby certify that the following described real estate in said county and Territory, to-wit: (describing the same), was on the.....day of..... A. D,, ... , duly sold by me in the manner provided by law. for the delinquent taxes for the year.....thereon, amounting to.....dollars, including interest and penalty thereon, and the cost allowed by law to..... for the sum of.....dollars, he being the highest and best bidder for the same. And I further certify that unless redemption is made of real estate, in the manner provided by

law, the said.....or assigns will be entitled to a deed therefor on and after the.....,.....day of..... A. D., ..., or surrender of this certificate.

In witness whereof I have hereunto set my hand this ..... day of..... ....., A. D,, ...

Treasurer.

(6213) § **16**. The treasurer is authorized to demand fifty cents for each deed or certificate made by him on such sale and the fee for the notary public or other officer acknowledging the deed, but any number of parcels of land bought by any one person may be included in one deed or certificate, as may be desired by the purchaser; and whenever the treasurer makes a deed of any land sold for taxes he shall enter an account thereof in the sale book opposite the description of the land conveyed. Fees for deed.

(6214) § **17**. When by mistake or a wrongful act of the treasurer, land has been sold on which no tax was due at the time, the county is to save the purchaser harmless by paying him the amouut of principal and interest at the legal rate of interest per annum from the date of sale. Erroneous sale corrected.

(6215) § **18**. The county treasurer of each county within the Territory is hereby authorized at all tax sales hereafter made under the laws of this Territory, in case there are no other bidders offering the amount due, to bid off all or any real estate offered at said sale for the amount of taxes, penalty, interest and costs due and unpaid thereon, in the name of the county in which the sale takes place, the said county acquiring all the rights both legal and equitable that any other purchaser could acquire by reason of said purchase. County treasurer may purchase, when.

(6216) § **19**. In case the owner of real estate or any person having any legal or equitable interest therein is desirious of redeeming said real estate from said sale, they shall have the right so to do any time within two years from the date of sale by paying the county treasurer the amount of all taxes, penalty, interest and cost of sale up to the date of redemption, and upon the payment thereof, the said county treasurer is hereby required to give the person so redeeming, a certificate of redemption, and to mark upon the tax duplicate that is kept in his office, opposite the discription of said real estate where said description is entered upon said duplicate, the word "Redeemed" and the date when the same was done, which certificate must be countersigned by the county clerk before it is delivered to the person redeeming, and shall be of no validity unless so countersigned. Redemption.

(6217) § **20**. If any person is desirous of purchasing the interest of said county in said real estate acquired by reason of said county treasurer bidding the same off in the name of and for said county, he may do so by paying to said county treasurer the amount of taxes, penalty, interest and cost of sale and transfer up to the date he so pays and thereupon the said treasurer shall, and it is hereby made his duty to assign and deliver to said purchaser the certificate of the purchase held by said county for said real estate, which assignment and transfer shall convey unto said purchaser all rights of said county both legal and equitable in Treasurer may sell certificate

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and to said real estate as much so as if he had been the original purchaser at said tax sale.

Certificate of purchase issued to county.

(6218) § **21**. Whenever the county treasurer of any county shall bid off any real estate in the name of his county, he shall make out a certificate of purchase to said county just as he is required to do if the sale had been made to any other person, but he shall retain the same in his office until transferred as provided in section 6217.

Certain taxes not payable

(6219) § **22**. No amount due the Territory or any other fund, costs or treasurer's commission shall be payable by the county on lands bid in by the county, until redemption is made from such sale or the time for redemption has expired, or until the interest of said county has been transferred or assigned as provided in section 6217.

Redemption of lands sold for taxes.

(6220) § **23**. The owner of any land sold for taxes, or any other person having legal or equitable interest therein may redeem the same at any time within two years after the day of such sale, or at any time before the execution of a deed of conveyance therefor by the county treasurer, by paying the county treasurer for the use of the purchaser, his heirs or assigns, the sum mentioned in this certificate and interest thereon at the rate of twenty-five per cent per annum from the date of purchase, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from date of such payment; and the treasurer shall enter a memorandum of the redemption of the list of sales, and give a receipt therefor to the person redeeming the same, and file a duplicate of the same with the county clerk as in other cases, and hold the money paid to the order of the purchaser, his agent or attorney: *Provided*, That infants, idiots, and insane persons may redeem any land belonging to them, sold for taxes, within one year after the expiration of such disability: *And provided further*, That when the owner of any land which has been sold for taxes, and who desires to redeem the same shall not demand a receipt or certificate of redemption from the county treasurer, the return of the certificate of purchase for cancellation shall operate as a release of all the claims to the tract or lot described therein, under or by virtue of the purchase; and the county treasurer upon receiving such certificate of purchase shall marke on the tax sale record opposite the description of the property for which said certificate of purchase has been issued "sale cancelled by return of certificate." The fee for making said entry shall be ten cents for each description: *And provided further*, That only ten per cent interest shall be charged at the redemption of land sold on the part of infants, idiots or insane persons.

Undivided lands.

(6221) § **24**. Any person claiming an undivided part of any land sold for taxes, may redeem the same on paying the purchase money, interest principal and subsequent taxes.

Tax deed, when given, effect.

(6222) § **25**. If any person shall redeem such lands within two years, at any time after the expiration thereof, and on production of the certificate of purchase, the treasurer of the county

in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, a deed of land remaining unredeemed, which shall vest in the grantee an absolute estate in fee simple in such land, subject however, to all claims which the Territory may have thereon for taxes or other liens or incumbrances.

Tax deed, when given, form of, validity.

(6223) § **26**. The deed shall be signed and executed by the county treasurer in his official capacity, and acknowledged before some officer authorized to take acknowledgments of deeds; and when substantially thus executed and recorded, in the proper record of titles to real estate, shall vest in the purchaser a full right, title and interest in and to said lands. Such deed shall be presumptive evidence in all the courts of the Territory, in all suits and controversies in relation to the rights of the purchaser, his heirs or assigns to the land thereby conveyed, of the following facts:

First. That the real property deeded was subject to taxation for the year or years stated in the deed.

Second. That the taxes were not paid at any time before the sale.

Third. That the real property deeded had not been redeemed from sale at the date of the deed.

Fourth. That the property had been listed and assessed.

Fifth. That the taxes were levied according to law.

Sixth. That the property was sold for taxes, as stated in the the deed, and was duly advertised before being sold, and to defeat the deed it must be clearly plead and clearly proven that some one of the above named six requisities was wholly omitted and not done and a showing that any one or all of them was irregularly done will not be sufficient to defeat the deed.

Such deed shall be held in all such cases, as conclusively proving the following facts:

First. That the manner in which the listing, assessment, levy, notice and sale were conducted was as to manner, and form or procedure, regular in all respects, and conducted as the law directs.

Second. That the grantee named in the deed or his assigns was the purchaser.

Third. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have performed any matter in connection therewith.

To defeat the deed, the person desiring to set the same aside and recover the land, or to resist the recovery of possession by the holder of the deed in addition to showing clearly the entire failure to do some one or all the things of which the tax deed is made presumptive evidence, must show that he or the person under whom he claims, had the right to redeem the land from tax sale at the time the deed was made, and must, when his action to set aside the tax deed is brought, or a defense to a recovery of possession is plead, tender in open court for the use of the holder of the tax deed, all taxes, penalties, interests and costs, which the party seeking to redeem would be bound to pay if he was then re-

Chap. 75. deeming the land from tax sale, and on failure so to do, his action or defense, as the case may be, shall be dismissed. The rule that tax proceedings are to be strictly construed as against the tax purchaser, shall not apply to proceedings under this act, but in all courts its provisions shall be liberally construed, to the end that its provisions and all proceedings thereunder shall be sustained. The tax deed shall be substantially in the following form, to-wit:

WHEREAS, A. B., did, on the.....day of.....A. D. 18....produce to the undersigned C. D., treasurer of the County of.....in the Territory of Oklahoma, a certificate of pur-purchase in writing bearing date of the.....day of..... 18...., signed by E. F. who at the last mentioned date was treasurer of said county, from which it appears that....., did on the.....day of.....18...., purchase at public auction, at the door of the court house in said county, the tract, parcel or lot of land lastly in this indenture described, and which lot was sold to.....for the sum of....., being the amount due on the following tract or lot of land, returned delinquent for nonpayment of taxes, costs and charges for the year 18...., to wit: (here insert the land offered for sale). And it appearing that the said A B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law and the said A. B., having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs and charges, as abov specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year 18....,and that said lands had been legally advertised for sale for said taxes, and were sold on the .....day of.....18.....

NOW, THEREFORE, this indenture, made this day..... day of..... ...., 18...., between the Territory of Oklahoma, by C. D., the treasurer of said county, of the first part and the said A. B. of the second part, witnesseth, that the said party of the first part for and in consideration of the premises and the sum of one dollar in hand paid, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell and convey to the said party of the second part.....heirs and assigns forever, the tract or parcel of land mentioned in said certificate and described as follows, to-wit: (describe the land) to have and to hold said mentioned tract or parcel of land with the appurtenances thereto belonging, to the said party of the second part .....heirs and assigns forever, in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

In testimony whereof, the said C. D. treasurer of said county of———, has hereunto set his hand and seal on the day and year aforesaid.

ATTEST. _____

[SEAL.]

Which deed shall be acknowledged by said Treasurer before some one authorized by law to take acknowledgments of deeds.

Limitation of action to recover land.

(6224) § **27**. No action shall be commenced by the holder of the tax deed or the former owner or owners of lands by any person claiming under him or them to recover possession or the land which has been sold and conveyed by deed for non-payment of taxes, or to avoid such deed, unless such action shall be commenced within one year after the recording of such deed; and in case of action to avoid the deed not until all taxes, interest and penalties, costs and expenses shall be paid or tendered by the parties commencing such action.

Tax sale not voidable

(6225) § **28**. The sale of lands, town or city lots on any other real property shall not be invalid on account of such real property having been listed or charged on the duplicate in any other name than that of the rightful owner; nor shall any such sale be invalid nor the conveyance for the real property so sold be voidable by reason of neglect or failure of the treasurer or any other officer to collect the tax for which it was sold by distraint and sale of personal property.

Certificate delivered for deed,

(6226) § **29**. When deeds are delivered for real property sold for taxes, the certificates therefor must be cancelled and filed away by the county clerk; and in case of the loss of any certificate, on being satisfied thereof by due proof and bond being given to the Territory of Oklahoma in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the the county treasurer may execute and deliver the proper conveyance and file such proof and bond with the county clerk

Judgment required for taxes due

(6227) § **30**. Whenever any action or proceeding shall be commenced and maintained before any court or judge to prevent or restrain the collection of any tax or part thereof, or any particular act of an officer in the collection thereof, or to recover any such tax previously paid, or to recover the possession or title of any property real or personal, sold for taxes, or to invalidate or cancel any deed or grant thereof for taxes, or to restrain, prevent recover or delay any payment of taxes, the true and just amount of taxes due upon such property or by such person if in dispute, must be ascertained and paid before the judgment prayed for, and if not in dispute must be paid in accordance with the provisions of section 6216.

SECTION.
1. Treasurer of county to pay money to Territorial Treasurer.
2. Failure to settle with Territorial Treasurer, penalty.
3. Land becoming taxable.
4 Warrant book for county, form.
5. Substituting warrants, penalty.
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7. Dereliction of officer.
8. Miscellaneous receipts.
9. Interest on warrants.
10. Redeemed warrants.
11. When warrant exceeds tax, provision.
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SECTION.
15. Failure to give additional surety.
16. Treasurer may not discount warrants.
17. Certain credits forbidden,
18. County treasurer shall not loan or use funds.
19. Payments after settlement.
20. Detailed exhibit of receipts and disbursements.
21. Loaning and embezzlement, penalty.
22. Extraordinary expenditure requires vote.
23. Duty of county treasurer to balance books and count funds in presence of county commissioners and county clerk.
24. Loaning, discounting, failure to produce funds, penalty.

Treasurer of county to pay money to Territorial Treasurer,

(6228) § **1**. The treasurers of the several counties shall pay into the Territorial Treasury all funds in their hands belonging thereto on or before the first Monday of March, and on the first Monday of September in each year, and at such other time as the Territorial Treasurer shall require, and the funds so paid in shall be the identical Territorial warrants, if any, received by the Treasurer for the payment of the tax, or in coin, or in treasury notes of the United States; and the said county treasurer shall send said warrants and money to the Territorial Treasurer by express, for which he shall be allowed the actual expenses of transmitting the same and no more.

Failure to settle with Territorial Treasurer, penalty.

(6229) § **2**. If the county treasurer shall willfully and negligently fail to settle with the Territorial Treasurer at the time and in the manner above described, he shall forfeit to the use of the Territory the sum of five hundred dollars, which sum may be recovered from him or his sureties on suit brought by the Territorial Treasurer in any court in this Territory having jurisdiction; or in case of failure of the Territorial Treasurer to bring such suit, then any citizen of the Territory may bring the same.

Land becoming taxable

(6230) § **3**. A list of lands becoming taxable for the first time in each county of the Territory, shall be procured by the Territorial Auditor from the proper land officers, and a list of the lands becoming so taxable in each of the several counties shall be forwarded by the Auditor to the county clerk of each county on or before the thirtieth day of December of each year.

Warrant book for county, form

(6231) § **4**. Each county treasurer is required to keep a book called the "Warrant Book" in which he shall enter every Territorial, county, road or other warrant or order by him paid or received in payment of taxes, specifying the date at which the same was received and cancelled, from whom received, the payee or person in whose favor it was drawn, its number and date, the amount for which it was originally drawn, the total number of indorsements or payments made thereon, the principal sum for which it was received, the interest allowed, and the total amount for which it was received; and the treasurer shall keep his account of warrants and orders by him received for and on account of taxes separate and

distinct from such as are paid him in cash, and in another and separate place, he shall enter an account of all indorsements made on warrants or orders in part payment thereof. Such warrant book shall be in the following form, to-wit:

TRASUREK'S WARRANT BOOK,.....COUNTY, OKLAHOMA TERRITORY.

Date	From whom received	Payee of warrant.	Number of warrant.	Date of warrant.	Am't	Ind'rs'm'ts.	Principal	Interest.	Total.

Substituting warrants, penalty

(6232) § **5**. If any county treasurer, or his deputy, or any other person, shall knowingly and wilfully make, issue and deliver any tax receipt, or duplicate tax receipt, and therein designate any part or parts of the amount thereof as being paid in warrants or orders when the same was paid in cash, such treasurer or deputy treasurer or other person shall be deemed guilty of a felony, for which he may be indicted by a grand jury, and on conviction thereof before any court of competent jurisdiction in this Territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one nor more than five years in the discretion of the court.

Fraudulent receipts, penalty.

(6233) § **6**. If any county treasurer in this Territory, or his deputy, or any person, shall knowingly or wilfully make, issue and deliver any tax receipt, or duplicate tax receipt, required by this act, to be issued, by fraudulently making the tax receipt and its duplicate, or the paper purporting to be its duplicate, different from each other, with intent to defraud the Territory of Oklahoma, or any county in said Territory, or any person or persons whomsoever, such treasurer, or deputy treasurer, or other person shall be deemed guilty of a felony, for which he may be indicted by thc grand jury, and on conviction thereof before any court of competent jurisdiction of this Territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one year, nor more thau five years, in the discretion of the court.

Dereliction of officer

(6234) § **7**. In the case of dereliction of any duty on the part of any officer or person required by law to perform any duty under the provisions of this act, in any county in the Territory, such person shall thereby forfeit all pay and allowance that would otherwise be due him, and the county commissioners in any such county, on receiving satisfactory evidence of such dereliction or failure to perform as required by law any duty enjoined by this act, shall refuse to pay such person or persons any sum whatever for such services.

Miscellaneous receipts.

(6235) § **8**. When any money shall be paid to the county treasurer, he shall make the proper duplicate receipts for the same, as in case of the payment of taxes, and shall give one of said receipts to the person paying said money and the other to the county clerk within one month thereafter.

Interest on warrants.

(6236) § **9**. When the county treasurer shall receive any

county or Territorial warrants or orders on which any interest is due, he shall note on such warrants or orders the amount of interest paid by him thereon, and shall enter in his account the amount of such interest distinct from the principal.

Redeemed warrants

(6237) § **10**. When the county treasurer of any county shall pay any county order drawn on him by the county commissioners, or when he shall take or receive any such order in payment of any tax, he shall write on the face of any such order "redeemed" and the date of redemption, and shall sign his name thereto.

When warrant exceeds tax, provision.

(6238) § **11**. When any person desiring to pay any taxes due and unpaid, shall present a county order to the treasurer of any county, in payment of such tax, which shall exceed the amount that such treasurer is authorized to receive in county orders in payment of such tax, he shall endorse on the back of such order in part payment the amount he is authorized by law to receive, and date the same. Said treasurer shall take two receipts from the holder of such order for the amount so indorsed and paid, showing the date of the indorsement, a full description of such county order, including the date thereof, to whom given, the the amount for which it was given, and all the indorsements thereon; one of which receipts he shall forthwith file with the county clerk, the other he shall retain as his voucher.

Delinquent treasurer.

(6239) § **12**. If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all money with which he may stand charged, at the time and in the manner prescribed by law, it shall be the duty of the county clerk, on receiving instructions for that purpose from the Territorial Auditor, or from the county commissioners of his county, to cause suit to be instituted against such treasurer and his sureties or any of them, in the district court of his county.

Board may remove

(6240) § **13**. Whenever suit shall have been commenced against any delinquent county treasurer as aforesaid, the Board of County Commissioners of such county may at their discretion remove such treasurer from office, and appoint some suitable person to fill the vacancy thereby created, as hereinbefore provided.

Additional surety may be required

(6241) § **14**. The county commissioners of any of the counties of this Territory, may require the county treasurer to give additional freehold securities whenever in the opinion of a majority of said county commissioners the existing security shall have become insufficient, and said commissioners are hereby also authorized and empowered to demand and receive from said county treasurer an additional bond as required by law, with good and sufficient freehold security in such sum as said commissioners or a majority of them may direct, whenever in their opinion more money shall have passed or is about to pass into the hands of said treasurer than is or would be recovered by the penalty in the previous bond.

Failnre to give additional surety.

(6242) § **15**. If any county treasurer shall fail or refuse to give such additional security or bond within twenty days from and after the day on which said commissioners shall have required said treasurer so to do, his office shall be declared vacant, and

another treasurer shall be appointed agreeable to the provisions of this act.

Treasurer may not discount warrants.

(6243) § **16**. No county treasurer shall directly or indirectly contract for or purchase any order or orders issued by the county for which he is the treasurer, at any discount whatever upon the sum due on such order or orders; and if any county treasurer shall so contract for or purchase any such order or orders, he shall not be allowed in settlement the amount of said order or orders, or any part thereof, and shall also forfeit the whole amount due on such order or orders, to be recovered by civil action at the suit of the Territory of Oklahoma for the use of the county.

Certain credits forbidden

(6244) § **17**. The county treasurer on his settlement with the county commissioners, shall not be credited with any sum for interest paid on any order unless he shall at the time of receiving the same have noted thereon the amount of interest due thereon.

County treasure shall not loan or use funds

(6245) § **18**. If the county treasurer shall loan any money belonging to his county, with or without interest, or shall use the same for his own individual purpose, he shall forfeit and pay for every such offense a sum not exceeding five hundred dollars nor less than one hundred dollars, to be recovered in an action at law at the suit of the Territory for the use of the county.

Payments after settlement

(6246) § **19**. Each county treasurer shall immediately after the annual settlement with the county commissioners of his county, on demand and presentation of the order of the clerk, issued by direction of the county commissioners therefor, pay over to the district or precinct treasurer, city treasurer or other proper officer, all the moneys in the county treasury belonging to any district, precinct, city, town or school district: *Provided*, That the moneys mentioned in this section may by the direction of the proper local officers remain in the county treasury on the order of the county clerk as aforesaid.

Detailed exhibit of receipts and disbursements

(6247) § **20**. The county clerk and the county treasurer conjointly shall make out annually a detailed exhibit, showing the receipts and disbursements of the county for the fiscal year, and also the assets and liabilities at the time of making out the same; said exhibits shall show the amount of all orders on the treasury issued during the year next preceding, to whom allowed, and on what account, and also the liabilities of the county stated in detail, and the assets of every kind as near as may be; showing also the amount of funds in the treasury at the time of making said exhibit, on what account paid in, and the kind of funds; said exhibit, shall be made out annually and posted up in the office of the treasurer on the first Monday in November.

Loaning and embezzlement, penalty.

(6248) § **21**. If any county treasurer, other officer or person charged with the collection, receipt, safe keeping, transfer or disbursement of the public money or any part thereof, belonging to the Territory or any county, precinct, district, city, town, or school district in this Territory, shall convert to his own use or to the use of any other person or persons, body corporate, association or party whatever, in any way whatever; or shall use by way of investment in any kind of security, stocks, loan property,

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land or merchandise, or in any other manner or form whatever; or shall loan with or without interest to any company or corporation, association or individual, or if any person shall advise, aid, or in any manner knowingly participate in such act, every such act shall be deemed and held in law to be an embezzlement of so much of said money or other property as aforesaid, as shall be thus converted, used, invested, loaned or paid out as aforesaid, which is hereby declared to be a felony; and upon presentation, trial by indictment and conviction thereof before any court of competent jurisdiction in this Territory, such county treasurer or other officer or person shall be sentenced to imprisonment in the penitentiary and kept at hard labor for a term of not less than one nor more than twenty-one years, according to the magnitude of the embezzlement, and also to pay a fine equal to double the amount in money or other property so embezzled as aforesaid; which fine shall operate as a judgment lien at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process for the use only of the party or parties whose money or other funds, property, bonds or other securities, assets or effects of any kind as aforesaid have been so embezzled; and in all cases such fine so operating as a judgment shall only be released or entered as satisfied by the party or parties in interest as aforesaid.

Extraordinary expenditure requires vote.

(6249) § **22.** If the county commissioners deem any expenditure necessary, greater in amount than can be provided for by the annual tax, they shall require a vote of the county thereon, either at a general election or one called especially for the purpose. In either case four weeks' notice of said election shall be given in each newspaper published in the county and the notice shall specify the amount to be raised, and the precise purpose for which it is to be expended; and if a majority of the votes cast authorize the tax the county commissioners shall cause the same to be levied and collected in the same manner as the annual tax, and if possible at the same time: *Provided, however*, That no new assessment shall be made for any special tax.

Duty of county treasurer to balance books and count funds in presence of county commissionrs and county clerk.

(6250) § **23.** In addition to the statements and showings required by this act, it shall be the duty of the county treasurer three times in each year to balance his books and come to an accounting with the county commissioners, and shall then produce and count in the presence of the county commissioners, any balance of money shown to be in his hands; he shall in addition thereto file his written oath that the money produced to be counted by the county commissioners is public money in his hands as county treasurer, and that no portion of it is borrowed for the purpose of being counted in the presence of the board. In addition to the above, the county treasurer shall once in each month produce and count in the presence of the county clerk the public funds in his hands as county treasurer, and the county clerk shall, in like manner, administer to the treasurer an oath that the money so counted is public funds and not borrowed for the purpose of being so counted before him by the county treasurer.

Loaning, discounting, failure to produce funds, penalty.

(6251) § **24.** If the county treasurer shall loan any part of

the public funds in his hands as such treasurer, or shall discount any county warrant either directly or indirectly, by himself or through others, or shall fail to produce any funds in his hands as such treasurer, when demanded for counting by the county clerk, or board of county commissioners, or shall fail to pay over any part thereof at any time when required by law so to do, he shall in addition to the penalties prescribed in this act, be deemed guilty of a crime against the revenue, the property of the Territory, and shall be punished as provided for that offense.

CHAPTER LXXVI.—RIGHT OF WAY.

AN ACT to Provide for Condemnation of Right of Way for foi Ditching Puiposes.

[Took effect December 25, 1890]

SECTION.
1. Condemnation of rights of way.
2. File plat, deposit fee, file petition,
3. Showing in court, viewers, report of.
4. Deposit of all costs and damages.
5. Fees per diem.
6. Appeal taken, how.
7 Decision final, when.
8. Appiaisers estimate what as damages.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

Condemnation of rights of way.

(6252) § **1**. It shall be lawful for any person or persons or corporations or partnerships, to condemn the right of way through the lands of others for the purpose of digging ditches and constructing drains to drain ponds, swamps, marshes and wet land, as in this act provided.

File plat, deposit fee, file petition.

(6253) § **2**. When it is desired so to drain lands as designated in the last section, parties desiring the right of way for ditch through the lands of others, shall file with the probate judge a map or plat showing the location of the land by section, township and range proposed to be drained, and showing the most feasible and direct line of drainage, and the names of the owners or homstead-occupants possessing the lands through which it is proposed to dig such ditch; and shall deposit with the probate judge of the county in which such ditch is to be dug, or the greater portion of it may lie, if it be in two counties, at least ten dollars to be applied in payment of costs, and a sworn petition stating the parties who desire to dig the ditch, asking the appointment of a board of appraisers to estimate the damages caused to the land of others by digging such ditch; thereupon the probate judge shall issue a notice to the parties whose lands are to be so invaded, of the application, which shall be served as a summons in a civil action.

Showing in court, viewers report of.

(6254) § **3**. In ten days after the service of such notice, the parties through whose lands the right of way is to be condemned, and the parties applying so to do, shall appear before the probate judge and make a showing as to parties fit to act as appraisers, and from the parties so suggested the probate judge shall choose three persons to view the lands and determine the manner as to

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whether or not drainage is necessary, and to fix and select the shortest and most direct line for the ditch to drain the lands, following as nearly as practicable section or half section lines, and shall estimate the damages to each piece of land to be crossed by such ditch, they shall make a report under oath showing the lands to be drained and the line of the ditch selected, and the award of damages made to each land owner or occupant, whose land may be crossed by such ditch, and file the same with the probate judge.

Deposit of all costs and damages

(6255) § **4.** Within ten days thereafter, the parties applying for the right to dig the ditch, must deposit with the probate judge all costs of the appraisers, and of the court, and amount of damages awarded to each claimant of land crossed by the ditch.

Fees per diem.

(6256) § **5.** The fees allowed to the appraisers shall be two dollars per day, and to the probate judge five dollars.

Appeal taken, how

(6257) § **6.** Within ten days after the money is so deposited, any party aggrieved may appeal from the award made by such appraisers to the district court of their county, as appeals are taken from the judgment of the justices of the peace. On the trial in the district court, the jury shall determine whether or not the drainage of the wet lands is necessary, and beneficial, and also the damages that should be awarded to the land-holders, if on such appeal the applicant recover a judgment for no greater sum than the award made by the appraisers, he shall pay the costs of the appeal.

Decision final, when

(6258) § **7.** If no appeal be taken within twenty days after the appraisers shall make and file their returns with the probate judge and within ten days after the money is deposited in payment of damages, the decision shall be final and conclusive, and the claimant and persons desiring to dig the ditch may enter upon the land, and proceed with the construction of such ditch in the manner and form of the size and depth shown to the appraisers to be necessary. The appraisers shall in their report to the probate court show the size and depth of the ditch by them calculated as damaging the lands through which it may pass.

Appraisers estimate what as damages

(6259) § **8.** The appraisers shall estimate as damages the costs of keeping up and maintaining any bridges that may be necessary to be maintained across such ditch for the purpose of maintaining proper farm crossings thereover.

CHAPTER LXXVII.—ROADS AND HIGHWAYS.

AN ACT in Relation to Roads and Highways.

[Took effect December 18, 1890.]

ARTICLE
1. Roads and highways.

ARTICLE.
2. Duties of travellers.

ARTICLE 1.—ROADS AND HIGHWAYS.

SECTION.
1. Section lines public highways, width.
2. Trustee to divide township, record, overseer.
3. Application, etc.
4 Petition.
5. Commissioners, notice, record, etc, meeting.
6. Petitioners' notice.
7. Viewers and surveyor.
8. Return, viewers' report, duty of commissioners.
9. Damage assessed.
10. Line ascertained.
11. On county and city lines.
12. Receipt of report
13. Compensation.
14 Notice of opening, duties of road overseer.
15. Posts and guide boards.
16. Streets, etc., highways.
17. Cities road district, duties of overseer, streets worked

SECTION.
18. Penalty
19. Road work.
20. Notice.
21. Performance, penalty.
22. Road tax.
23. Duty of county clerk.
24. Duty of township trustee.
26. Unpaid taxes.
26. Road work, receipt.
27. Obstructing highway
28. Width of road.
29. Petition for outlet.
30. Report of overseer, penalty.
31. Fast driving.
32. Penalty.
33. Per diem.
34. Expense.
35 Water works.
36. Road taxes, how and for what purpose applied.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Section lines public highways, width.

(6260) § **1**. All section lines in this Territory shall be and are hereby declared to be public highways. The said roads or highways shall be sixty-six feet wide, until otherwise changed or vacated under the provisions of this act, and shall be taken equally from each side of said section line: *Provided*, That forest or fruit trees may be planted and grown to within twenty-five feet of the center of such highway.

Trustee to divide township, record, overseer.

(6261) § **2**. The township trustee of each municipal township shall divide his township into convenient road districts, and he may make such alterations in the same as may be necesaary. He shall cause a record to be made accurately by defining the boundaries and number of each road district, as well as all alterations made in such district or districts in his township. Each road district shall elect its own overseer at the first election for county and township officers after the passage and approval of this act, and at every biennial election thereafter, who shall hold his office for the term of two years.

Application, etc.

(6262) § **3**. That application for laying out roads or for viewing, reviewing, altering or vacating any road, shall be by petition to the board of county commissioners signed by at least twelve

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persons who are free holders or who occupy real estate under the homestead laws of the United States, of the county, residing in the vicinity where the said road is to be laid out, viewed, reviewed, altered or vacated, and one or more of the signers of any petition presented as aforesaid, shall enter into a bond with sufficeint security, payable to the Territory of Oklahoma, for the use of the county, to be approved by the county commissioners, conditioned that the persons signing such bond shall pay into the treasury of the county, the amount of all costs and expenses accruing on said location, view, review, alteration or vacation; in case the proceedings had in pursuance of said petition shall not be finally confirmed and established, and on neglect or refusal of the persons so bound, after a liability shall have accrued, the county clerk of the county shall collect or cause to be collected, such costs and expenses and pay the same into the county treasury.

Petition.

(6263) § **4.** All petitions for laying out or altering roads shall specify the place of beginning, the intersection points, if any, and the place of termination of such road.

Commissioners, notice, record, etc., meeting.

(6264) § **5.** Upon presentation of any petition for a road, or for the alteration or vacation of any road, the county commissioners at any regular session of their board, it shall be the duty of said commissioners. if they find the petition to be a legal one, and that the proper bond has been filed, to appoint three disinterested free holders of the county as viewers, and the county clerk shall give notice by advertisement set up in the county clerk's office, and in every municipal township through which any part of the road is designed to be laid out, altered, or vacated, for at least twenty days, and the publication for two consecutive weeks in a newspaper, if there be one published in the county, setting forth that such petition has been presented, giving the substance thereof, and that the viewers will, on such day as the commissioners designate, not more than twenty days after the expiration of the notice herein required, proceed to view such road and give all parties a hearing. They shall also cause a record of such notice to be entered on their journal by the county clerk, They shall issue an order directing the county surveyor to meet them at the time and place named in said notice, to survey such road. In case of failure to meet on the day designated, they may meet on the following day without further notice and in case of failure to meet within the time herein specified new notice shall be given as hereinbefore provided; that in all applications for the location, change and re-location of any road, to be located upon or along any half or quarter section line, and the petition shall so state, and shall specify the half or quarter section lines to be followed, the place of beginning and the place of ending, the survey may be dispensed with, and in case the owners of the land taken agree in writing, to the proposed location, relocation or change, and the commissioners are satisfied that the location, relocation or change prayed for is practicable, and can be made without unreasonable expense, they may dispense with the viewing of such location, relocation or change of road, and shall order the same to be opened, and also direct the county clerk

to note such location, relocation or change of roads upon the road records of his office.

Petitioner's notice.

(6265) § **6.** It shall be the duty of at least one of the petitioners to cause six days notice to be given in writing to the owner or owners, or their agents, if residing in the county, or if such owner be a minor, idiot or insane person, then to the guardian of such person, if a resident of the county, through whose lands such road is proposed to be laid out and established, and also six days notice to the county surveyor, of the time and place of meeting, as specified in the notice of the commissioners. Copies of said notice to owners of lands, with affidavits of service attached, shall be filed in the county clerk's office before said road shall be established.

Viewer's and surveyors.

(6266) § **7.** It shall be the duty of the viewers, or a majority of them, and the county surveyor to meet at the time and place specified in the notice aforesaid, or on the following day thereafter; and they may, if they deem it necessary, take to their assistance two suitable persons as chain carriers, and then proceed to view, survey, lay out, alter or vacate the road as prayed for in said petition, or as nearly as a good road can be made at a reasonable expense, taking into consideration the utility, convenience and inconvenience and expense, which will result to individuals as well as to the public, if such road, or any part thereof, shall be established and opened or altered. Said viewers shall also assess and determine the amount of damages sustained by any person or persons through whose premises the said road is proposed to be established. Said viewers shall not assess or award damages or compensation to any person or persons in consequence of the opening of said road unless the owner or owners or their agents or guardians, having been duly notified as provided in section five of the applications and proceedings by which their property is sought to be appropriated or damaged, shall have filed a written application with said viewers, giving a description of the premises on which damages or compensation are claimed at the time of said view and hearing as hereinbefore provided for: *Provided*, That in case that any person has not received the notice of the view of said road, as provided for in section five, he may at any time within twelve months after the location of said road, file an application for damages with the county commissioners, who shall determine the amount of damages sustained by such claimant, and all applications for damages shall be forever barred, unless they are presented as provided for in this act.

Return, viewer's report, duty of commissioners.

(6267) § **8.** The surveyor shall survey said road under the directions of the viewers, and cause the same to be conspicuously marked throughout, noting the courses and dictances. He shall also make out and deliver to the county clerk, without delay, a correct and certified return of the survey of the said road, and a plat of the same, and the viewers shall make and sign a report in wrlting, stating their opinion in favor of or against the establishment, alteration or vacation of said road, or any part thereof, and set forth the reason of the same; which report shall be delivered to the county clerk by one of the viewers on or before the first day

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of the session of the county commissioners then next ensuing, and it shall be the duty of the commissioners, on receiving the report aforesaid, to cause the same to be read before their meeting; and if said report is favorable, and no legal objections appear against said report, and they are satisfied that such road will be of public utility, they shall order said road survey and plat to be recorded, and from thence forth said road shall be considered a public highway, and the commissioners shall issue their order to the trustees of the respective townships in which said road is located, directing them to cause the same to be opened for the public travel; but if the report of the viewers be against such proposed road or alteration, and in the opinion of the commissioners said report is a just one, and that such road as applied for is unnecessary, then no further proceedings shall be had thereon; and the obligor or obligors in the bond securing costs, shall be liable for the full amount of all costs accrued by reason of the view of said road.

Damage assessed

(6268) § **9**. It shall be the duty of the viewers at the same time they make their report of the view, to also make a separate report to the county commissioners in writing, stating the amount of damages, if any, by them assessed, and to whom. They shall also be required to submit with such report, the written application on which assessments have been made. All allowances for damages, as provided in this act, shall be subject to revision by the board of county commissioners, and any person feeling himself aggrieved by the award of damages made by the board of county commissioners, may appeal from the decision of the said board of county commissioners to the district court upon the same terms, and in the same manner, and with like effect as in appeals from judgments of justices of the peace in civil cases.

Line ascertained.

(6269) § **10**. When the place of beginning or true course of auy road shall be uncertain, by reason of the removal of any monument or marked tree by which the road was originally designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested house-holders of the county to review and straighten said road if they deem it necessary; and the county surveyor shall survey the same and said reviewers and surveyor shall review and survey said road, and the same correctly mark as in the case of new roads, and shall make a correct return of said survey, and a plat of said road to the commissioners, who shall cause the same to be recorded as in other cases, and from thenceforth said road, surveyed as aforesaid, shall be considered as a public highway.

On county and city line

(6270) § **11**. When it shall become necessary to establish, alter or vacate a road on a county line, the inhabitants along such line may petition the board of [county] commissioners of their respective counties, for a view of said road in the manner hereinbefore provided; and it shall be the duty of the board of commissioners for each of the counties interested, to appoint three disinterested house-holders, as viewers, who, or a majority of whom, shall meet at the time or place named in the order of the county interested first, in alphabetical order, together with the surveyor of such county; and the viewers and surveyors aforesaid, shall

assess all damages, and shall in all respects be governed by the preceding provisions of this act, and the viewers and surveyors shall make their report in writing for or against such road, and the commissioners upon receiving such report, shall be governed by this act; and when it shall become necessary to establish, alter or vacate a road on the line of any city, the board of commissioners of the county and the corporate authorities of such city may each appoint three householders as above who shall proceed as directed herein to establish, alter or vacate a road of the width of sixty feet along such line, one half on the side of the city and the other half on the side of the county; or the said viewers may act separately in laying off so much of said road as lies within the corporate limits of said city, or county outside of said city: *Provided*, That all expenses either in money, material or labor necessary for the opening, improvement or keeping in repair of said roads shall be borne jointly and equally by the townships or township and city or town contiguous thereto.

Receipt of report.

(6271) § **12**. If, on receiving such report, and there being no legal objection thereto, and the commissioners interested, or a majority of them, shall be of the opinion that said road, if established, altered or vacated, would be of public utility, they shall order the same to be done in the manner provided in this act.

Compensation.

(6272) § **13**, All persons required to render service under this act shall receive compensation for each day they shall necessarily be employed as follows, to-wit: Viewers and chain-carriers, one dollar each, to be charged as costs and expenses and paid out of the county treasury on order of the commissioners.

Notice of opening, duties of road overseer.

(6273) § **14**. It shall be the duty of each and every road-overseer, to open or cause to be opened all roads and highways which have been or may hereafter be laid out or established throughout any part of the district assigned to such over-seer, first giving notice to the owner or owners, or their agent or agents if residing in the county, or if such owner be a minor, idiot, or insane person, then to the guardian of such person if a resident of the county, through whose enclosure or cultivated lands such road is laid out or established, notifying such owners aforesaid to open said road through their lands within ninety days after service of such notice; and if the person or persons so notified do not open such road within the time named in such notice, it shall be lawful for such over-seer, or any person under his direction, to enter upon said lands and open said road: *Provided*, That if such notice be given between the first day of March and the first day of October, the notice shall designate the first day of January next as the time of opening such road, and the over-seer shall keep the same in repair, and remove or cause to be removed, all obstructions that may from time to time be found thereon, for which purpose the over-seer is hereby authorized to enter upon any uncultivated land unencumbered by a crop, near or adjoining a public road, to dig and carry away any gravel, sand or stone, and to purchase any timber which may be necessary to im-

prove or repair said road and to enter upon any land adjoining or lying near to said road, to make such drains or ditches through the same as he may deem necessary for the benefit of the roads, doing as little damage to said lands as the nature of the case and the public good will permit, and the drains and ditches thus made shall be kept open by the overseer, if necessary, and shall not be obstructed by the owner or occupants of said land, or by any other person, under the penalty of being fined not exceeding ten dollars for each offense, before any justice of the peace of the county. Any overseer, who shall take away any gravel or stone for the purpose of repairing any road, or for building or repairing any bridge, shall, upon demand of the owner, give a certificate showing the quantity and value thereof, and the time when taken, and upon the presentation of such certificate to the trustee of the township in which such road or bridge is situated, the owner of such certificate shall be allowed by the township trustee such compensation as may be just and equitable.

Posts and guide boards

(6274) § **15**. Each over-seer within his district shall erect and keep up at the expense of the township posts and guide boards at the forks of all public roads containing an inscription in legible letters directing the way and warning the distance to the nearest towns or cities situated on said roads;and any road over-seer, failing to do so in a reasonable time, not to exceed six months, shall, upon conviction thereof before any justice of the peace of the proper county, be fined in any sum not exceeding five dollars with costs of suit; and such fine when collected, shall be paid into the county treasury for school purposes.

Streets, etc., highways.

(6275) § **16**. All avenues, streets and alleys in cities which are or may hereafter be laid out agreeable to law, shall be and are hereby declared public highways: *Provided*, That the municipal authorities of any incorporated city may make or ordain and enforce such ordinances concerning the sidewalks of the streets of such city as shall be deemed necessary to prevent such sidewalk from being used for the passage of horses, wagons or carriages, or hitching horses or other animals thereon.

Cities, road district, duties of overseer, streets worked.

(6276) § **17**. Each incorporated city of more than three hundred inhabitants, shall constitute a separate road district, and the corporate authorities of such corporation, shall have power to appoint a road over-seer for such corporation, fix his term of office and compensation and remove him from office for any misconduct, and shall require him to give bond with good security for the faithful discharge of his duties, and for the safe keeping and proper use of any money or property that may come into his hands or custody, and to use the same in the manner directed by the corporation, and such over-seers shall do and perform all the duties in the same manner and under the same instructions and limitations as are provided for the government of over-seers in this act, except as herein otherwise provided; and the said corporate authorities of any such city are authorized and empowered to use the four days work provided for by this act, or the money paid by persons in the discharge of the same, in paving, macadamizing or grading the streets or alleys in such city in any manner provided

by ordinance or resolution of any corporation: *Provided*, Such work or moneys shall be applied first to the most public streets not macadamized or graded, and that the work required to be done as provided for in this act, shall be done between the first day of March and the first day of December of each year, and such city shall have the power to pass any law or ordinance necessary to carry out fully the provisions of this act.

Penalty.

(6277) § **18**. If any person shall wilfully demolish, throw down, alter or deface any mile-stone or guide-board, on or at the forks of any roads, or shall wilfully obstruct any such road by any means or in any manner whatever, every person so offending shall, on conviction, be adjudged guilty of a misdemeanor, and be punishished by imprisonment in the county jail not exceeding three months or by a fine of not less than twenty nor more than one hundred dollars, or by both such fine and imprisonment, which fine shall be paid by the officer receiving the same into the county treasury for school purposes. And every person obstructing any such road as aforesaid, shall also be liable in a civil action for all damages sustained by any person who has in any manner whatever been damaged by reason of such obstruction.

Road work.

(6278) § **19**. All male persons between twenty-one and forty-five years of age, who have resided thirty days in this Territory, who are capable of performing labor on public highways, and who are not a township or a county charge, shall be liable each year to perform four days work of eight hours each on the public roads, under the direction of the road over-seer within whose district they may respectively reside, or furnish a substitute to do the same, or pay the sum of one dollar per day to said road over-seer, who shall receipt for the same, and expend it in repair on the public roads within his district; and any moneys so received and not expended shall be paid over to his successor in office, who shall expend the same as above provided: *Provided*, That one dollar per day shall be allowed for a team when used at the discretion of the supervisor.

Notice.

(6279) § **20**. The over-seer of highways in each road district shall give notice to persons residing in his district liable to or charged with a road tax, of the time and place he will attend and direct the work to be performed as aforesaid. The over-seer may direct what impliments such person shall bring with which to perform such work.

Performance, penalty.

(6280) § **21**. Whenever it shall happen in consequence of sickness, or absence from home, or from any other cause, that the four days work aforesaid shall not be performed within the time specified in this act, the overseer shall be authorized to require the performance of such work at any time prior to the first day of December then next ensuing; and in case any person shall neglect or refuse to do the four days work or furnish a substitute, or pay the sum of one dollar per day, as provided in this act, he shall be deemed guilty of a misdemeanor, and shall be fined in the sum of five dollars for each refusal so to work, upon conviction before any justice of the peace of the township. If any person shall appear at the proper time and place as directed by the overseer, and neg-

lect or refuse to do a reasonable days work according to his ability he shall be liable the same as if he neglected or refused to appear or furnish a substitute or pay the said sum of money as provided herein.

Road tax.

(6281) § **22**. The county commissioners of each county by and with the consent of the respective township trustees, may at the time prescribed by law for levying county taxes, levy a road tax of not more than five mills on the dollar on all taxable property in their respective townships, except the real estate in incorporated city of over two thousand inhabitants, and the said tax may be paid in labor under the direction of the over-seer of the district in which the property is situated, by any able bodied man at the rate of one dollar per day and the same amount shall be allowed for horse-team and wagon, or team and plow.

Duty of county clerk.

(6282) § **23**. It shall be the duty of the county clerk, after such tax has been levied, to furnish to each township trustee a list of all taxable real estate, and persons charged with taxes on personal property within their respective townships, and the amount of road tax chargeable to each tract or person, said list to be furnished on or before the first day of January of each year.

Duty of township trustee.

(6283) § **24**. The trustees of the several townships, after receiving the list mentioned in the preceding section, shall proceed to make out lists of all the taxable real estate, and all persons charged with taxes on personal property, with the amount of road tax chargeable to each tract and person within the various road districts, and deliver the same to the overseer of such districts on or before the first day of March of each year.

Unpaid taxes.

(6284) § **25**. All road taxes remaining unpaid on the first day of December shall be returned by the road overseer to the township trustees or to the city clerk in such cities of over two thousand [inhabitants] as have township organization. The township trustee or city clerk shall on or before the fifteenth day of December return all such delinquent road taxes to the county clerk, who shall charge the same against the respective lands, lots or personal property on the county tax roll for the current year.

Road work, receipt.

(6285) § **26**. It shall be the duty of each road over-seer to receipt to each person who performs labor on the public highways of the district under the provisions of this act, for the amount of labor so performed; and he shall specify the land or land or the persons for which such labor was the payment of the road tax, which receipt shall be received by the county treasurer in payment of road taxes charged against lands or persons described therein for the year; and in case the labor performed by any person shall exceed the amount of road tax which such person wishes to pay for that year, the road overseer shall give such person a certificate showing that such person has performed such amount of labor, which certificate shall be received by the county treasurer in payment of such person's road tax for the following year; and the county treasurer shall receive no per centum on the amount of road taxes thus paid and receipted.

Obstructed highways.

(6286) § **27**. If at any time any highway shall be obstructed or become impassable, or any bridge be impaired so as to be un-

safe; it shall be the duty of the overseer of the district in which such obstruction, impassable road or impaired bridge may be situated, to cause such obstruction to be removed, or such road or bridge to be repaired forthwith; for such purpose he shall order out such number of persons liable for road tax in his district as will be necessary to make said repairs; and every person so ordered out, who shall refuse or neglect to attend with proper implements, or shall spend the time in idleness after reporting for labor, shall be liable to a fine of five dollars.

Width of roads.

(6287) § **28**. The width of all roads shall be determined by viewers at the time of establishing the same, and shall not be more than eighty or less than sixty feet.

Petition for outlet.

(6288) § **29**. That whenever the premises of any person in this Territory shall be so completely surrounded by adjoining lands, by the property of other persons as to be without access to any public highway, then such person may petition the board of county commissioners of the county in which such premises lie, for a road through some portion of the of the adjoining lands, and the board shall, on the presentation of such petition, proceed in accordance with the provisions of the foregoing sections to lay out such road, make return of plats and allow damages, if any should be held or allowed: *Provided*, Said road shall not exceed twenty-five feet in width and be laid out upon a half section line when practicable.

Report of overseer, penalty.

(6289) § **30**. Each over-seer shall, on or before the twentieth day of March of each year, report to the township trustee the names of all persons subject to the four days road tax for the preceding year, the names of those who have worked out said tax, the names of those who have paid said tax in money, and the names of those delinquent; and also all moneys received by him from all sources, and how expended, and the account of said road over-seer of work performed by himself, which report shall be approved by said trustee before any final settlement shall be made with such road over-seer. Each and every road over-seer or other officer, who shall neglect or refuse to perform the several duties enjoined upon him by this act, or who shall under any pretense whatever, give or sign a receipt or certificate for labor performed or money paid unless the labor shall have been performed or money paid prior to the signing or giving of such receipt or certificate, every over-seer so offending shall forfeit for every suchoffense not less than five nor more than fifty dollars, to be recovered by an action before any justice of the peace within the township where such overseer may reside; and it is hereby made the duty of every county attorney to prosecute all offenses against the provisions of this act not otherwise provided for.

Fast driving.

(6290) § **31**. It shall be the duty of the township trustees of the several townships in each county in this Territory to cause to be put up and kept in good repair at each end of each and every bridge erected by the county upon any highway in their respective townships, a span of not less than twenty-five feet a notice which shall be printed in conspicious [letters] with the following

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Penalty. (6291) § **32**. It shall be unlawful for any person or persons, to ride or drive any horse, mule, ass or ox over any such bridge, faster than a walk, or drive more than fifty head of cattle on such bridge at one time, and any such person who shall so unlawfully ride or drive such horse, ass or ox over such bridge, or drive over the same more than fifty head of cattle at one time, upon conviction thereof shall pay a fine of ten dollars and costs of suit.

Per diem. (6292) § **33**. Road over-seers shall be allowed one dollar and fifty cents per day for all services required by this act and actually performed in their respective districts, to be paid in township orders, as other claims are paid: *Provided*, No over-seer shall receive pay from the township for more than twenty-five days in any one year, and not until he has made the return provided for in section thirty of this act.

Expense. (6293) § **34**. All expenses either in money, material, or labor arising from the improvement of any portion of such road, shall be borne jointly by the counties or townships contiguous thereto, as the case may be.

Water marks (6294) § **35**. That each road over-seer within his district, shall erect and keep up at the expense of the township, posts or boards at the fords of every river or creek that in high water becomes impassable, which posts shall be set at or near low water mark, on which shall be inscribed in legible letters or plain figures the depth of water at low water, together with a scale of feet showing the scale of feet above low water mark to the height which said stream is known to have ever risen.

Road taxes how and for what purpose applied. (6295) § **36**. The township trustees shall receive from the county treasurer the road taxes paid within their respective townships, and they shall be appropriated to the building of bridges, culverts, repairing of roads and the purchasing of necessary plows and scrapers for repairing roads within the respective road districts from which the same was collected under the supervision of the road overseer of such road district.

ARTICLE 2.—DUTIES OF TRAVELLERS.

AN ACT Defining the Duties of Persons Using the Public Highways.

[Took effect December 18, 1890.]

SECTION.
1. Method of passing.
2. Same, fine
3. Drunken drivers,
4 Teams not tied.
5. Injury to passengers.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Method of passing. (6296) § **1**. Whenever any persons shall meet each other on any bridge or road, travelling with carriages, wagons, sleds, sleighs or other vehicle, each shall pass to the right of the

middle of the travelled part of such bridge or road, so that the respective carriages or other vehicle aforesaid may pass each other without interference.

Same, fine.

(6297) § **2.** Each person offending against the provisions of the preceding section shall for each offence be fined in a sum not exceeding ten dollars, and shall be liable to the party injured for all damages sustained by reason of such offense.

Drunken drivers.

(6298) § **3.** No person owning or having the direction or control of any coach or other vehicle running or travelling upon any or any of the streets or alleys of any town, village or city in this Territory for the conveyance of passengers, shall employ or continue in employment any person to drive such coach or other vehicle, who is addicted to drunkenness or to the excessive use of intoxicating liquors; and if any such person shall violate the provisions of this section, he shall forfeit a sum not less than ten and not exceeding fifty dollacs, and shall be liable for all damages sustained.

Teams not tied.

(6299) § **4.** It shall not be lawful for the driver of any carriage or other vehicle to leave the horses attached thereto upon any street or public highway without making such horses fast with a sufficient halter, rope or chain, or without some suitable person to take the charge or guidance of them so as to prevent their running, and if any such driver shall violate the provisions of this section, he and his employer or employers, jointly and severally, shall forfeit a sum not exceeding twenty dollars, but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offence.

Injury to passengers.

(6300) § **5.** The owners of any carriage or other vehicle running or travelling upon any road, street or alley, for the conveyance of passengers or other persons for hire, shall be liable jointly and severally to the party injuried in all cases for all damages done by any person in the employment of such persons as driver while driving such carriage or vehicle to any person or to the property of any person, whether the act occasioned such injury or damage be wilful, negligent or otherwise, in the same manner as such driver would be liable.

CHAPTER LXXVIII.—SPECIFIC OBLIGATIONS,

ARTICLE.
1. General provisions.
2. Rights and obligations of seller.
3. Rights and obligations of buyer.
4. Sale by auction.
5. Exchange.

ARTICLE 1.—GENERAL PROVISIONS.

Sale.

SECTION.
1. Sale defined.
2. Subject of sale.

Agreements for Sale.

SECTION.
3. Agreements for sale classed.
4. Agreements for sale defined.
5. Agreement to buy defined.
6 Agreement to sell and buy.
7. Subject of contract.
8. Sale of realty.
9. Agreement to give usual covenants.
10. Substance of the covenants.

Form of the Contract.

SECTION.
11. Statutes of frauds, personal property.
12. Contract to manufacture.
13. Contract for sale of real property.
14. Form of transfer.

Sale defined.

(6301) § **1**. Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to an another an interest in property.

Subjects of sale.

(6302) § **2**. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

Classes of agreements for sale.

(6303) § **3**. An agreement for sale is either:

First. An agreement to sell.

Second. An agreement to buy; or,

Third. A mutual agreement to sell and buy.

Agreement to sell defined.

(6304) § **4**. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

Agreement to buy defined.

(6305) § **5**. An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing.

Agreement to sell and buy

(6306) § **6**. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him, and to pay a price therefor.

What is subject of the contract

(6307) § **7**. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for a sale, whether in existence or not.

Sale of realty.

(6308) § **8**. An agreement to sell real property binds the

seller to execute a conveyance in form sufficient to pass the title to the property.

Agreement to give usual covenants.

(6309) § **9**. An agreement on the part of a seller of real property to give the usual convenants, binds him to insert in the grant, covenants of seizin, quiet enjoyment, further assurance. general warranty, and against incumbrances.

Substance of the covenants

(6310) § **10**. The covenants mentioned in the last section must be in substance, as follows;

The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

Statute of frauds, personal property.

(6311) § **11**. No sale of personal property, or agreement to buy or sell it for a price of fifty dollars or more, is valid unless:

First. The agreement or some note or a memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or,

Second. The buyer accepts and receives part of the things sold, or when it consists of a thing in action, part the evidences thereof, or some of them; or,

Third. The buyer, at the time of sale, pays a part of the price.

Contract for manufacture.

(6312) § **12**. An agreement to manufacture a thing from materials furnished by the manufacturer or by another person, is not within the provisions of the last section.

Contract for sale of real property.

(6313) § **13**. No agreement for the sale of real property, or of an interest therein, is valid unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

Form of transfer.

(6314) § **14**. The form of a transfer of real property is described by the chapter on such transfers.

Rights and Duties Before Delivery

SECTION.
1. Seller acts as depositary.
2. Seller may resell.

Delivery.

SECTION.
3. Delivery on demand.
4. Delivery, where.
5 Expense of transportation.
6. Notice of option.
7. Buyer's directions govern.
8. Reasonable hours.

Warranty.

SECTION.
9. Warranty defined.
10. Not implied by sale.
11. Warranty of title to personalty.
12. Warranty of quality by sample.
13. Seller knows buyer relies on him.
14. Merchandise not in existence.
15. Warranty against latent defects.
16. Fit for purpose.
17. Inaccessible merchandise
18. Trade-mark genuine.
19. Marks of quality.
20. Validity of instrument.
21. Food sound and wholesome
22. Sale of good-will.
23. Upon judicial sale.
24. General warranty.

Seller acts as depositary.

(6315) § **1.** After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property without charge, until the buyer has had a reasonable opportunity to remove it.

Seller may re-sell

(6316) § **2.** If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller, after payment is due, the seller may rescind the sale, or may enforce his lien for the price in the manner prescribed by the chapter on liens.

Delivery on demand

(6317) § **3.** One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

Delivery where.

(6318) § **4.** Personal property sold is deliverable at the place where it is at the time of sale or agreement to sell, or, if it is not then in existence, it is deliverable at the place where it is produced.

Expense of transportation

(6319) § **5.** One who sells personal property must bring it to his own door, or other convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

Notice of option.

(6320) § **6.** When either party to a contract of sale has an option as to the time, place or manner of delivery, he must give the other party reasonable notice of his choice, and if he does not give such notice within a reasonable time, his right of option is waived.

Buyers directions govern sending

(6321) § **7.** If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner

of sending, or it will be at his own risk during its transportation. If he follows such directions, or if in the absence of special directions he uses ordinary care in forwarding the thing it is at the risk of the buyer.

Reasonable hours

(6322) § **8.** The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

Warranty defined

(6323) § **9.** A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present or future.

Not implied by mere sale.

(6324) § **10.** Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty.

Warranty of title to personalty.

(6325) § **11.** One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unimcumbered title thereto.

Warranty of quality by sample.

(6326) § **12.** One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

Seller knows buyer relies on him.

(6327) § **13.** One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

Merchandise not in existence.

(6328) § **14.** One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

War rant against latent defects

(6329) § **15.** One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

Fit for purpose.

(6330) § **16.** One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

Inaccessible merchandise.

(6331) § **17.** One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

Trade-mark genuine.

(6332) § **18.** One who sells or agrees to sell any article to which there ls affixed or attached a trade mark, thereby warrants that mark to be genuine and lawfully used.

Marks of quality.

(6333) § **19.** One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was in whole or in part produced, manufactured or prepared, thereby warrants the truth thereof.

Validity of instrument

(6334) § **20.** One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants the instrument to be what it purports to be, and to be binding according to its purport upon all the parties thereto, and also warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the

parties thereto, where that is material, the extinction of its obligations or its invalidity for any cause.

Food sound and wholesome.

(6335) § **21**. One who makes a business of selling provisions for domestic use, warrants, by a sale thereof, to one who buys for actual consumption, and not for the purpose of sale, that they are sound and wholesome.

Sale of good will.

(6336) § **22**. One who sells the good-will of a business, thereby warrants that he will not endeavor to draw off any of the customers.

Upon judicial sale

(6337) § **23**. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

General warranty.

(6338) § **24**. A general warranty does not extend to defects inconsistent therewith, of which the buyer was then aware, or which were then easily discernible by him, without the exercise of peculiar skill; but it extends to all other defects.

ARTICLE 3.—RIGHTS AND OBLIGATIONS OF THE BUYER.

SECTION.
1. Buyer to pay and take away.
2. Right to inspect.
3. Buyer may rescind, when.

Buyer to pay and take away.

(6339) § **1**. A buyer must pay the price of the thing, sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it.

Right to inspect.

(6340) § **2**. On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time before accepting it, and may rescind the contract if the seller refuses to permit him to do so.

Buyer may rescind for breach of warranty

(6341) § **3**. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not and executed sale, unless the warranty was intended by the parties to operate as a condition.

ARTICLE 4.—SALE BY AUCTION.

SECTION.
1. Sale by auction defined.
2. Sale complete, when.
3. Withdrawal of bid.
4. Sale within conditions.
5 Absolute right of bidder.
6. Bidding by agent of seller.
7. Auctioneer's memorandum.

Sale by auction defined.

(6342) § **1**. A sale by auction is a sale by public outcry to the highest bidder on the spot.

When sale is complete.

(6343) § **2**. A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or any other customary manner, that the thing is sold.

Withdrawal of bid.

(6344) § **3**. Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

Sale within conditions.

(6345) § **4**. When a sale by auction is made upon written or

printed conditions, such conditions cannot be modified by any oral declaration of the auctioner, except so far as they are for his own benefit.

Absolute right of bidder.

(6346) § **5**. If, at a sale by auction, the auctioneer having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and upon such a sale, bids by the seller or any agents for him are void.

Bidding by request of seller, fraud.

(6347) § **6**. The employment by a seller at a sale of auction, without the knowledge of the buyer, of any person to bid at the sale, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid as a fraud upon the buyer which entitles him to rescind his purchase.

Auctioneer's memorandum.

(6348) § **7**. When property is sold by auction an entry made by the auctioneer in his sale book, of the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both parties in the same manner as if made by themselves.

ARTICLE 5.—EXCHANGE.

SECTION.
1. Exchange defined,
2. Validity of contract.
3. Each party a seller
4. Warranty as to money.

Exchange defined

(6349) § **1**. Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

Validity of contract

(6350) § **2**. The provisions of section 6311 apply to all exchanges in which the value of the thing to be given by either party is fifty dollars or more.

Each party is a seller.

(6351) § **3**. The provisions of the title on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that what he takes.

Warranty that money is genuine.

(6352) § **4**. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAHTER LXXIX.—SCHOOLS.

AN ACT establishing a system of public schools in the Territory of Oklahoma and providing for the maintainance thereof

[Took effect December 5, 1890]

ARTICLE.
1. Township, city and high schools.
2. Normal institutes.
3. Board of education.
4. Certificates.
5. Territorial Superintendent.
6. County superintendent.
7. City superintendent and teachers.
8. Township and city school boards.
9. Powers and duties of school boards.
10. School property, funds, and taxes.
11. Territorial or permanent school funds.
12. Management of school fund.
13. Color line.
14. School districts established and school sites located.

ARTICLE 1.—TOWNSHIP, CITY, AND HIGH SCHOOLS.

SECTION.
1. Township schools.
2. City schools.
3. High schools.
4. City schools when controlled by county superintendent
5. Branches and language taught.
6. Sectarian doctrine.
7. School year and month.
8. Daily session.
9. Length of term, how regulated.

Be it enacted by the Legislative Assembly of the Territory of Oklahomà.

Township schools.

(6353) § **1**. There shall, where the school population is sufficient, be established in each township by the board thereof, at least four schools, and in districts where the number of pupils attending any school shall be deemed sufficient to demand more than one teacher, the requisite number shall be employed, one of whom shall be principal, and the school shall become a township graded school, supervised by the principal.

City schools.

(6354) § **2**. Every town or city school board shall establish a graded school or schools of sufficient numper to meet the demands of the pupils resident within the control of said board.

High schools.

(6355) § **3**. One high school in each township and one in each city of over five hundred inhabitants may be established by a majority vote of the voters of said township or city: *Provided*, That no township or city funds shall be appropriated to the support of any high school until there be reserved therefrom funds sufficient to support the common and graded schools for a term of not less than nine months.

City schools, when controlled by county superintendent.

(6356) § **4**. All public schools established by township or city boards shall be under the supervision of the county superintendent of schools, except the public schools of cities whose population exceeds two thousand five hundred, and the schools of said cities shall be under the supervision of a principal or city superintendent of schools.

Branches and language taught.

(6357) § **5**. The common school course shall include orthography, penmanship, reading, arithmetic, geography, English language, United States history and constitution, physiology and

hygiene, and such other branches as the township or city boards may direct: *Provided*, That the school course enumerated in this section shall be taught in the English language only.

Sectarian doctrine.

(6358) § **6**. No sectarian doctrine, or religious doctrine shall be taught or inculcated in any of the public schools of the Territory; but nothing in this section shall be construed to prohibit the reading of the Holy Scriptures.

School year and months.

(6359) § **7**. The school year shall begin with the first day of July of each fiscal year and shall close with the thirtieth day of June next ensuing. Four consecutive weeks of five days each shall constitute a school month: *Provided, however*, That there shall be no school on legal holidays.

Daily session.

(6360) § **8**. The daily session shall commence not later than nine a. m. and close at four p. m., with such recesses and noon intermissions as the township or city boards may direct, and all teachers shall be in their respective school rooms at least fifteen minutes before the time prescribed for the opening of the morning session.

Length of term how regulated.

(6361) § **9**. The length of term taught in any school year in each of the several schools established in any one township or city shall be regulated by the school board thereof.

ARTICLE 2.—NORMAL INSTITUTES.

SECTION.
1 Annual Normal institute.
2. Conductors and instructors.
3 Normal Institute fund
4 Custodian.
5. Monthly reports.
6. Disbursements.
7. Union institutes.

Annual normal institute

(6362) § **1**. County superintendents of public instruction shall hold annually in their respective counties, for the term of not less than two weeks, a normal institute for the instruction of teachers and those desiring to teach: *Provided*, That in sparcely settled portions of the Territory, two or more counties may be united in holding one normal institute as hereinafter provided.

Conductors and instructors.

(6363) § **2**. The county superintendent of public instruction, with the advice and consent of the Territorial Superintendent of Public Instruction, shall determine the time and place of holding such normal institutes and shall select a conductor and instructors for the same: *Provided*, That no person shall be paid from the institute funds for services as conductor or instructor of said institute who shall not have received a certificate from the Territorial board of examiners as to his special qualifications for the work.

Normal institute fund

(6364) § **3**. To defray the expenses of said institute, the county superintendent shall require the payment of a fee of one dollar from each candidate for a teacher's certificate, and the payment of one dollar registration fee for each person attending the normal institute.

Custodian.

(6365) § **4**. The fund thus created shall be designated as the "normal institute fund," and the county treasurer shall be the custodian thereof.

Monthly reports.

(6366) § **5**. The county superintendent shall, monthly and at

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the close of each institute, transmit to the county treasurer all moneys received by him as provided in section twelve, together with the name of each person so contributing and the amount, and the county treasurer shall place all such moneys to the credit of the "normal institute fund."

Disbursements

(6367) § **6**. All disbursements of the "normal institute fund" shall be upon the order of the county superintendent, and no orders shall be drawn upon said fund except for claims approved by the superintendent, for services rendered or expenses incurred in connection with the normal institute.

Union institute.

(6368) § **7**. Two or more counties may be united in holding one normal institute, with the consent and by the directions of the Territorial Superintendent of Public Instruction: *Provided*, That the several county superintendents of the counties so uniting shall choose one of their number to act for them in determinining the time and place of holding the normal institute, and in selecting a conductor and instructors for the same as provided in section 11: *And provided*, That the person thus chosen shall draw all orders upon the normal institute fund as provided in section 15: *And provided*, That the treasurer of the county in which such normal institute shall be held shall be the custodian of the normal institute fund, and to whom the several county superintendents of the counties thus uniting shall transmit the fees collected as provided in section 12.

ARTICLE 3.—BOARD OF EDUCATION.

SECION.
1. Territorial board
2. Powers and duties.

SECTION.
3. Compensation.

Territorial board.

(6369) § **1**. The Territorial Superintendent of Public Instruction, together with the county superintendents of the Territory, shall constitute the Territorial board of education.

Powers and duties.

(6370) § **2**. This board shall have power to grant Territorial certificate, shall prepare questions for the county examination, and and shall constitute an advisory board in all matters pertaining to the educational interests of the Territory, and shall, once in five years, adopt a a uniform series of text books for use in the public schools of the Territory. All shall be purchased by said board and distributed to the townships and city boardswithin their control

Compensation

(6371) § **3**. The members of the Terrtorial board of education shall receive no compensation for services, but shall be allowed all necessary expenses incurred by the discharge of their duties as members of said board.

ARTICLE 4.—CERTIFICATES.

SECTION.
1. County certificates, public examination.
2. Grades of certificates.
3. First grade, to whom issued.
4. Second grade, to whom issued.
5. Third grade.
6. Temporary certificates.

SECTION.
7. Force of certificates where, revocation.
8. Examination questions.
9. Questions forwarded, how.
10. Traffic in questions.
11. Teaching without certificate, illegal
12. Territorial diploma.

County certificates, public examination.

(6372) § **1**. The county superintendent shall on the last Friday and Saturday of January, April and October, only at such places as shall be designated by the county superintendent, upon ten days notice of each examination, publicly examine all persons proposing to teach in public schools of the county, as to their competency to teach the branches prescribed by law, and the county superintendent shall issue certificates, as hereinafter provided, to all such applicants as shall pass the required examination and satisfy the county superintendent as to their good moral character and ability to teach and govern schools successfully.

Grades of certificates.

(6373) § **2**. Certificates issued by county superintendents shall be of three grades; first, second and third, and shall continue in force respectively, three years, two years and one year.

First grade, to whom issued.

(6374) § **3**. Certificates of the first grade shall certify that the person to whom issued is proficient in and fully qualified to teach orthography, reading, writing, English grammar, composition, geography, arithmetic, United States history, constitution of the United States, book keeping, physiology and hygiene, the theory and practice of teaching and the elements of natural philosophy, and shall not be issued to persons under twenty years of age, nor to such as have not taught successfully twelve school months: *Provided*, That persons who receive first grade certificates shall make a general average of not less than ninety per cent, and in no case shall a person receive a certificate of the first grade who shall fall below seventy per cent in any one branch.

Second grade.

(6375) § **4**. Certificates of the second grade may be issued to persons of not less than eighteen years of age, who shall have taught successfully not less than three school months, and who shall fully satisfy the county superintendent as to their ability to teach all the branches prescribed for the first grade certificates, except book-keeping and the elements of natural philosophy: *Provided*, That persons who receive a second grade certificate shall make a general average of not less than eighty per cent, and in no case shall a person receive a second grade who shall fall below sixty per cent in any one branch.

Third grade.

(6376) § **5**. Certificates of the third grade may be issued to persons of not less than sixteen years of age, who shall have passed the same examination as required for a second grade certificate, except physiology and hygiene, constitution and theory, and practice of teaching, and made an average of not less than seventy per cent, and in no case shall a person receive a certificate of the third grade who shall fall below fifty per cent in any one branch and no third grade certificate shall be issued more than twice to the same person.

Temporary certificates

(6377) § **6**. The county superintendent, upon request made in writing by the secretary of the township or city board, and after satisfying himself by examination of the ability and proficiency of an applicant, may grant a temporary certificate in case of necesity, valid only in the designated township or city, and valid only

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until the next regular examination by the county superintendent of education: *Provided*, That no such temporary certificate shall be granted to any applicant who has failed in the last regular examination, nor shall such certificate be granted twice to the same applicant.

Certificates of force, where, revocation.

(6378) § **7**. The county superintendent shall endorse unexpired certificates issued in other counties, which certificates shall thereby be valid in the county in which such endorsement is made until the next regular examination held in such county. A certificate issued under this act may be revoked for cruelty, immorality, incompetency, or negligence in the performance of the duties incumbent upon a teacher.

Examination, questions.

(6379) § **8**. The Territorial board of education shall prepare a series of questions for each examination held in each county in the Territory, said questions to be used in a written examination of all applicants for county certificates: *Provided*, That the written examination shall be supplemented by such oral or written examination as the county superintendent may deem necessary to determine more fully the qualifications of each applicant.

Questions forwarded, how.

(6380) § **9**. The Territorial Superintendent shall procure the printing of the questions for uniform county examinations and forward the same to the superintendents of the several counties, and said questions shall not be opened prior to the day of examination: *Provided*, That the cost of printing such questions be paid by the Territory.

Traffic in questions

(6381) § **10**. Whosoever shall sell, barter or give away to any applicant for certificate, or to any other person, the questions prepared by the Territorial board of education, to be used by county superintendents in the examination of teachers, or in any way dispose of said questions, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five nor more than two hundred dollars.

Teaching without certificate, illegal

(6382) § **11**. No person shall be employed to teach in any public school in the Territory who does not hold a valid certificate: *Provided*, That if the certificate of an employed teacher expires during such employment his contract shall expire with such certificate unless prior to such expiration such teacher obtain a new certificate.

Territorial diploma

(6383) § **12**. The Territorial board of education is hereby authorized and empowered to issue Territorial diplomas to such professional teachers as may be found upon a critical examination to possess the requisite scholarship and culture, and who may also exhibit satisfactory evidence of unexceptional moral character and eminent professional ability, and experience covering a period of not less than ten years, and who have taught for one year in the Territory subsequent to the passage of this act. All such diplomas shall be countersigned by the Territorial Superintendent of Public Education [Instruction] and shall supercede the necessity of any and all other examination of the person holding the same, by county superintendents, and such diplomas shall be valid in any county, city, town, or school township in the Territory during the life time of the holder, unless revoked by the Territorial board of

education: *Provided*, That no life diploma shall be in force after its holder shall permit a space of three years to elapse without following some educational pursuit, unless said certificate be endorsed by the acting Territorial Superintendent. Until otherwise ordered by the Territorial board of education, applicants for the above Territorial diploma shall be examined in the following branches: Psychology, science of pedagogy, history of education, general history, elements of natural sciences, etomology, algebra and geometry: *Provided*, That no such certificate shall be granted to any person while holding the position of county or Territorial Superintendent.

ARTICLE 5.—TERRITORIAL SUPERINTENDENT.

SECTION.
1 Appointment.
2. Vacancy.
3. Official qualifications.
4 General duties.
5. Apportionment.
6 Official opinions.
7. School laws and blanks.
8. Visitation.
9. Office.
10. Biennial reports.
11. Salary.

Appointment.

(6384) § **1**. Within ten days after the passage and approval of this act, the Governor shall appoint, by and with the advice and consent of the Territorial Council, a Territorial superintendent of Public Instruction, who shall hold his office for the term of two years and until his successor is appointed and qualified.

Vacancy.

(6385) § **2**. When a vacancy shall occur in the office of the Territorial Superintendent of Public Instruction, by death, resignation or otherwise, the Governor shall appoint, as soon as practicable, some person to fill the vacancy, and the person receiving such appointment shall qualify as required by law before entering upon the discharge of the duties of the office and shall hold his office until his successor is appointed and qualified.

Official qualifications.

(6386) § **3**. The Superintendent of Public Instruction shall, before he enteres upon the duties of office, take and subscribe to the proper oath of office, and shall execute to the Territory of Oklahoma a bond in the sum of ten thousand dollars, with two or more sufficient sureties, to be approved by the executive council, or in case there is no executive council, then by the Governor, conditioned that he shall faithfully perform the duties of said office, which oath and bond shall be filed in the office of the Secretary of the Territory. [*Amended to read as follows*]: The Superintendent of Public Instruction shall, before he enters upon the duties of his office, take and subscribe to the proper oath of office, and shall execute to the Territory of Oklahoma two bonds in the sum of five thousand dollars each, with two or more sufficient sureties to be approved by the Governor and Secretary of the Territory. One of such bonds as *ex-officio* Territorial Auditor, and the other as Superintendent of Public Instruction, conditioned that he shall faithfully perform the duties of said offices. Each oath and bonds shall be filed in the office of the Secretary of the Territory.

General duties.

(6387) § **4**. The educational interests of the Territory shall be under the supervision and management of the Territorial Superintendent of Public Instruction, subject to such limitations and restrictions as are or may be prescribed by law; and he shall have and exercise the powers and perform the duties pertaining to such office.

Apportionment.

(6388) § **5**. Such Territorial Superintendent shall apportion the income of the Territorial school fund and the annual taxes collected by the Territory for the support of public schools to those counties of the Territory from which proper reports have been received by said Territorial Superintendent. Such apportionment shall be made as follows: All such moneys remaining in the Territorial treasury on the fifteenth day of January shall be apportioned between the fifteenth and last day of such month, and that remaining on the fifteenth of July shall be apportioned between the fifteenth and last day of such month. The apportionment to each county shall be made in proportion to the number of children over the age of six years and under the age of twenty-one years resident therein, as shown by the last annual report of the county superintendent to the Territorial Superintendent. Such superintendent in distributing all funds mentioned in this section shall draw his order on the Territorial Secretary or other officer having custody of such fund, in favor of the county treasurers of the counties respectively entitled to school moneys for the amount of such moneys apportioned to his county, and certify the amount of such order to the Territorial Secretary, and also to the county clerk and superintendent of the proper county: *Provided*, That the federal appropriation made shall be apportioned under the direction of the Governor, after the passage of this act, to the several counties in proportion to the number of children of school age shown by the national census.

Official opinions.

(6389) § **6**. Such Superintendent shall at the request of any county or city superintendent give his opinion upon a written statement of facts on all questions and controversies arising out of the interpretation and construction of the school laws in regard to the rights, powers and duties of township and city boards, school officers and county superintendents, and shall keep a record of all such opinions. Before giving any opinion which involves the construction of the school law, the superintendent shall submit the statement of facts to the Attorney General forthwith, for his opinion thereon, to examine such statement and suggest the proper opinion to be made upon such facts.

School laws and blanks.

(6390) § **7**. Such Superintendent not more than once in two years may publish the school laws in force, with such forms, regulations, instructions and decisions as he may judge expedient, thereto annexed and shall cause the same to be forwarded to the persons entitled to receive them. He shall prescribe and cause to be prepared all forms and blanks necessary in the details of the public school system, so as to secure its uniform operation throughout the Territory, and shall cause the same to be forwarded to the several county and city superintendents, to be by them distributed to the several persons or officers entitled to receive the same:

Provided, That as soon after the passage of this act as practicable, the Secretary of the Territory shall publish and distribute the school laws as provided in this act.

Visitation.

(6391) § **8**. It shall be the duty of such Superintendent to visit each county in the Territory at least once in each year, and as much oftener as may be consistent with the discharge of his duties, for the purpose of advancing and promoting the cause of education throughout the Territory, and to open such correspondence as may enable him to obtain all necessary information relating to the system of schools in other states.

Office.

(6392) § **9**. Such Superintendent shall have an office at the seat of Government, where he shall keep all books and papers pertaining to the duties of his office, and all books, school and other, and all apparatus, maps and charts belonging to the office of the Territorial Superintendent, and such as may hereafter be received for such office by purchase, exchange or otherwise, shall be kept and preserved in such office, and delivered by the Superintendent to his successor. He shall file and carefully preserve in his office, the official reports made to him by the county superintendents of the several counties, trustees or directors of academies, graded schools or colleges.

Biennial reports.

(6393) § **10**. The Superintendent shall on the first day of December preceding each regular session of the Legislature, make out and deliver to the Governor a report containing:

First. A statement of the number of public schools in the Territotry, the number of pupils attending the same, their sex, and the branches taught; a statement of the number of private schools in the Territory, so far as the same can be ascertained, and the number of pupils attending the same, their sex, and the branches taught; a statement of the normal schools in the Territory, and the number of students attending them, the number of academies and colleges in the Territory, the number of students and their sex, attending them, and such other matters of interest as he may deem expedient, drawn from the reports of the county superintendents of the several counties in the Territory, and from other reports received on the subject of education from the trustees or other school boards within the Territory.

Second. A statement of the condition of the public school funds of the Territory, including moneys, school lands or other property held in trust by the Territory for the support of the public schools, and giving a full statement of the school land account of each county.

Third. A statement of the receipts and expenditures of the year.

Fourth. A statement of plans for the management and improvement of public schools, and such other information relating to the educational interests of the Territory as he may deem important.

Salary

(6394) § **11**. The Territorial Superintendent shall receive a salary of twelve hundred dollars per annum, the same to be audited and paid by the Territory as salaries and contingent expenses of other Territorial officers are paid.

Chap. 79. ARTICLE 6.—COUNTY SUPERINTENDENT.

SECTION.
1. Election.
2. Vacancy in office.
3. Professional qualifications.
4. Oath and bonds.
5. General duties.
6. Apportionment of school funds
7. Annual report.
8. Compensation.

Election

(6395) § **1**. The election of county superintendent of public instruction shall be held in the several counties at the same time and in the same manner as that of other county officers, and his term of office shall be two years: *Provided*, That the Governor, by and with the advice and consent of the Territorial Council, shall within ten days after the passage and approval of this act, appoint county superintendents to serve in the several counties until the first general election.

Vacancy in office.

(6396) § **2**, When a vacancy shall occur in the office of county superintendent of public instruction, by death, resignation or otherwise, notice thereof shall be given by the county clerk, to the board of county commissioners, who shall, as soon as practicable, appoint some person of requisite qualifications to fill the vacancy, and the person receiving such appointment shall, before entering upon the discharge of the duties of his office, file his oath or affirmation and bond in the county clerk's office, as hereinafter provided, and shall hold his office until his successor is elected and qualified

Professional qualifications,

(6397) § **3**. The county superintendent shall be twenty-four years of age, or over, and shall hold a diploma from a state normal school, or shall hold a Territorial certificate, or a first grade county certificate, or shall possess attainments equivalent thereto.

Oath and bonds.

(6398) § **4**. The county superintendent of public instruction shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation to support the Constitution of the United States and the Organic Act of the Territory of Oklahoma, to discharge faithfully the duties of such office, and shall execute to the Territory of Oklahoma a bond in the sum of two thousand dollars, conditioned to the faithful performance of his official duties; which bond, after having been approved by the board of county commissioners, together with his official oath, shall be filed in the office of the county clerk

General duties

(6399) § **5** It shall be the duty of the county superintendent of public instruction to visit each school in his county at least once each term of six months, correcting any deficiency that may exist in the government of the school, the classification of the pupils, or the methods of instruction in the several branches taught, to make suggestions in private to the teacher as he may deem proper and necessary to the welfare of the school; to note the condition of the school house, furniture, apparatus and grounds, and make a report in writing to the school township board, making such suggestions as in his opinion will improve the same; to examine the accounts and record books of the school township officers, and see that they are kept as required by law; to encourage the formation of associations of teachers and educators,

for mutual improvement, aud as far as possible to attend the meetings of such associations and participate in the exercises of the same; to attend the normal held in his county, using his influence to secure the attendance of teachers, to make daily a personal inspection of the work of the institute in session, and keep a record of the same in his office, and do such work in connection with the exercises of the institute as he may deem necessary; to hold public meetings in each school township of his county for the purpose of discussing school questions and elevating the standard of education. He shall keep is office open when not necessarily absent attending to his official duties. He shall keep a complete record of his official acts; a record of the name, age, and postoffice address of each person to whom is granted a teacher's certificate, with the number of weeks said person has attended a normal school or institute, the number of weeks he has taught, his standing in each study and the date of issue and expiration of each certificate granted. He shall keep a register of the teachers employed in his county, giving name of teacher, number of the district in which he is employed, dates of opening and closing term, salary per month, grade of certificate and date of superintendent's visit. He shall keep a record of the apportionments of the Territory and county school funds, and such other statistical records as shall be required in making reports to the Territorial Superintendent of Public Instruction. He shall make out and transmit to the Territorial Superintendent on the last Monday of March, June, September and December of each year, a report showing the number of school visits made, with the average length of time spent in such visits, the number of township clerk's record books examined, the number of teacher's meetings attended and such other information as the Territorial Superintendent may require regarding the duties of such county superintendent, and until such report shall have been forwarded to the Territorial Superintendent, and a copy thereof filed with the county clerk for publication, and that fact certified by the said county superintendent to the board of county commissioners, the warrants for his salary shall not be drawn.

Apportionment of school funds

(6400) § 6. Within five days after receiving the certificate of the Territorial Superintendent of Public Instruction, informing him of the amount of Territorial fund which has been apportioned to his county, the county superintendent shall apportion the same, together with the unapportioned county funds in the treasury, among the school townships, parts of townships and cities in such county, in the ratio of the number of persons of school age residing in each township or parts of townships and cities to the whole number of school children in such county, as shown by the last annual reports of the several clerks of such townships, parts of townships; and he shall give notice to the county clerk of the apportionment to each of the several school township and city boards of the amount apportioned to each township or city, and on presentation of such notice, the clerk shall give notice to the county treasurer to so apportion the school funds in his hands to

Chap. 79. the respective cities and townships, and he shall himself keep a record thereof.

Annual report. (6401) § 7. He shall, on or before the fifteenth day of October of each year, make out and transmit in writing to the Territorial Superintendent of Public Instruction, a report bearing date of October first, containing a statement of the number of school districts or parts of districts in the county, and the number of children and their sex, resident in each, over the age of six and under the age of twenty-one years on October first; a statement of the number of the district schools in the county, the length of time a school has been taught, the number of pupils attending the same, their sex, the branches taught and the text books used, the number of teachers employed in the same and their sex, a statement of the number of private schools in the county, so far as the same can be ascertained, and the number of teachers employed in the same, their sex, the number of pupils in each, their sex and the branches taught; a statement of the number of graded schools in the county, the length of time school has been taught in each, and the number of pupils attending the same, their sex and the branches taught, the number of teachers employed in the same and their sex, and the number of persons between the ages of twelve and twenty-one who are unable to read or write; a statement of the amount of public money received in each township or parts of townships, and what portion of the same, if any. has been apportioned to the support of graded schools; a statement of the amount of money raised in each township by tax, and paid for teachers' wages, in addition to the public money paid therefor; the amount of money raised by tax or otherwise, for the purpose of purchasing school house sites, for building, hiring, purchasing, repairing, furnishing or insuring school house, or for any other purpose allowed by law.

Compensation. (6402) § 8. The county superintendent shall receive a salary of five hundred dollars per annum, to be paid quarterly out of the county treasury.

ARTICLE 7.—CITY SUPERINTENDENT AND TEACHERS.

SECTION.
1. City superintendent.
SECTION.
2. Teachers' records and reports.

City superintendent. (6403) § 1. The school boards of each city having a population of two thousand five hundred inhabitants and over, shall in the same manner that other teachers are employed, select a city superintendent of public instruction, who shall be the principal of such schools in such city, and who shall have direct supervision of all public schools of the city, subject to such rules and regulations as each city school board may prescribe.

Teacher's records and reports (6404) § 2. It shall be the duty of every teacher to keep in a register for that purpose a daily record of the attendance of each pupil, and to make out and file with the secretary of the school board, at the expiration of each term of school, a full report of the whole number of pupils admitted to the school during such term,

distinguishing between male and female, the text books used, the branches taught and the number of pupils engaged in the study of such branches, the standard which all pupils have attained in the various branches pursued according to the prescribed course of study, and any other information the school board or county superintendent may require. He shall also see that the school property of the district placed under his care and control is not unnecessarily damaged or destroyed. The wages for a teacher for the last month of a school term, shall not be paid by any school board, unless said teacher shall have satisfactorily accounted for books, apparatus and other property belonging to the district of which he may have been in charge, and shall have complied with all the requirements of this section. Chap. 79.

ARTICLE 8.—TOWNSHIP AND CITY SCHOOL BOARDS.

SECTION.
1. Election.
2. Annual election.
3 Vacancy.
4 Organization.
5. Office forfeited.
6. Body corporate.
7. Meetings.
8. President.
9. Secretary.
10. Bond of secretary.
11. No compensation

Election

(6405) § **1**. The Governor of the Territory shall call an election to be held within thirty days after the passage and approval of this act, at which election school boards shall be elected as follows, to wit: The qualified voters of each township shall meet at the proper or designated precinct and elect by ballot from the township at large one person as president of the school board who shall serve to the close of the current school year. Also at the same voting precinct in each township on the same day and in the same manner the qualified voters of each district shall elect one member of the school board from their district. The members in districts one and three shall serve to the close of the current year; those elected in districts two and four shall serve to the close of the second year. And also on the same day and in the same manner, and for the same length of term as stated in the foregoing part of this section, a president shall be elected in every city. Also one member of the school board shall be elected from each ward. The members elected in first, third and fifth wards shall serve to the close of the current school year; those elected in second, fourth and sixth wards shall serve to the close of the second school year. In all elections for school purposes of any kind, whatsoever, all persons possessing the qualifications of electors residing in such district, or school township, shall be entitled to vote without distinction of sex.

Annual election

(6406) § **2**. On the first Tuesday of April, one thousand eight hundred and ninety-one, and annually thereafter, an election shall be held as prescribed in the preceding section to fill such vacancies of the school boards as shall occur by virtue of the expiration of the term of office to which said members were elected, the president serving three years and the members elected from districts and wards serving two years respectively: *Provided,*

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That members elected at the first election shall serve as stated in section fifty-three: *And provided also*, That in cities no member of the school board shall be a member of the town or city council.

Vacancy

(6407) § **3**. The county superintendent shall have power to fill any vacancy which may occur in any school board: *Provided*, That any vacancy occurring more than ten days previous to the annual election and having an unexpired term of one year, shall be filled at the first annual election thereafter; and the ballots and the returns of election shall be designated as follows: "To fill unexpired term."

Organization.

(6408) § **4**. The term of office of the members of school boards shall begin on the first Tuesday of May after their election, and the various township and city boards shall meet and complete their respective organizations by electing one of their number secretary within ten days after the aforesaid date: *Provided*, That the members elected immediately after the passage of this act shall organize and enter upon their respective duties within one week after said election. All of such school officers before entering upon their official duties shall take an oath to perform such duties faithfully. The president, and in his absence the secretary, is hereby authorized and empowered to administer such oath.

Office forfeited.

(6409) § **5**. Any person duly elected as a member of the school board, who shall refuse or neglect, without sufficient cause, to qualify at the time specified, or who having entered upon the duties of his office shall neglect or refuse to perform any duty required of him by the provisions of this act, shall thereby forfeit his right to the office to which he was elected, and the vacancy thus occasioned shall be filled by the county superintendent.

Body corporate

(6410) § **6**. Each township and city board organized in pursuance of this act shall be a body corporate and shall possess the usual powers of a corporation for public purposes, and by its designated name and number may sue and be sued, make contracts and buy and sell real and personal estate as the interests of the school, township or city may require, as hereinafter provided.

Meetings.

(6411) § **7**. The regular meetings of township and city boards shall be held at such times and places as they may determine: *Provided, however*, That they shall meet at least once in every three months, but special meeting may be held from time to time as circumstances may demand, upon the call of any two members of the board.

President

(6412) § **8**. It shall be the duty of the president to preside at all meetings of the school board, to appoint all committees, and when the school board shall order any sum of money to be paid out, the president shall draw a proper order for the amount in favor of the parties to whom the board has ordered the money to be paid, and directed to the county clerk and deliver the same to the party in whose favor it is drawn, or to his order. When said order is received by the county clerk; he shall retain it and draw his warrant on the county treasury for the amount of such order,

and in favor of the holder thereof, and make a proper record thereof in his office.

Secretary.

(6413) § **9.** It shall be the duty of the secretary of the board to keep an accurate journal of its proceedings, to have the care and custody of the records and papers of the board, to countersign all orders drawn by order of the board, to keep an account of all moneys paid or orders drawn on the county treasury by order of said board, and shall prepare and cause to be published annually a statement under oath, showing: *First*, The moneys received by the board since last report, and from what source received; *Second*, The amount of sinking fund, if any, and how invested. *Third*, The moneys paid out, to whom, and for what paid. *Fourth*, The balance of general fund in the hands of the county treasurer. *Fifth*, The number, date and amount of any bond issued by said board, purchased by the authority of this act, and the amount paid therefor, and shall perform such other duties as the board or its committee may require.

Bond of secretary.

(6414) § **10.** Before entering upon the discharge of his duties, the secretary of the school board shall give bond, with good and sufficient securities to be approved by the board.

No compensation

(6415) § **11.** No member of the school board shall receive any pay or emoluments for his services.

ARTICLE 9.—POWERS AND DUTIES OF SCHOOL BOARDS.

SECTION.
1 Absence of president.
2. Official business.
3. Expenditures.
4. Personal interest in sales.
5. Supervision and control.
6. Branches of study and school apparatus.
7 Employment and dismissal of teachers.
8. Supervision and expulsion of pupils.
9. Contagious diseases.
10. Payment of teachers' wages.
11. Assignment of pupils.
12. Annual statement
13. Enumeration lists.
14. Assessment and collection.

Absence of president

(6416) § **1.** If the president or secretary be absent from any meeting, or being present, refuse to perform his official duties as president or secretary *pro tempore* officers shall be appointed.

Official business

(6417) § **2.** No official business shall be transacted by the board except at a regular or special meeting, and every measure adopted must receive a majority vote of all the members of the school board; and no business shall be transacted at a special meeting, except such as is specified in the call for such meeting.

Expenditures.

(6418) § **3.** No expenditure involving an amount greater than fifty dollars shall be voted, except in accordance with the provisions of a written contract duly entered of record.

Personal interest in sales

(6419) § **4.** No school officer or teacher shall be interested directly or indirectly in the sale, proceeds or profit of any book, apparatus or furniture used or to be used in any school in this Territory. Any person offending against the provisions of this section shall be liable to indictment, and upon conviction, shall be fined in any sum not less than twenty-five dollars and not more than five hundred dollars, and may be imprisoned in the county

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jail not less than one nor more than twelve months, at the discretion of the court.

Supervision and control

(6420) § **5**. The school board shall have the control and supervision of all school-houses in their township or city, and may grant the temporary use of school-houses, when not occupied for schools, for religious meetings and Sunday schools, for evening schools and literary societies, and for such other meetings as the school board may deem proper. Such use to be under the direction of the members of the school board residing in the district.

Branches of study and school apparatus.

(6421) § **6**. The school board shall direct the branches of study to be taught in accordance with section five and what apparatus shall be used in the several schools, and adopt and enforce all necessary rules and regulations for their management and government.

Employment and dismissal of teachers,

(6422) § **7**. The school board shall have power at any regular or special meeting to employ teachers and fix the amount of their salaries, they shall have power also to dismiss a teacher for incompetency, cruelty, negligence or immorality.

Suspension and expulsion of pupils.

(6423) § **8**. The school board shall visit and inspect the school from time to time as the good of the school may require. They may expel or suspend pupils who may be guilty of gross disobedience or misconduct, and no action shall lie against them for such expulsion. In cases of such conduct the teacher shall report the same to the member of the school board in his district who shall at once call the board together and they shall meet and support the recommendation of the teacher and order a temporary suspension of the pupil, or expel him as recommended, unless satisfied that such recommendation is clearly wrong.

Contagious diseases

(6424) § **9**. No pupil infected with any contagious disease shall be allowed to attend any public school or remain in any school room while so infected.

Payment of teachers' wages

(6425) § **10**. Teachers' wages are hereby declared due and payable monthly, and the school board shall at once make out and deliver to the teacher an order upon the county clerk for the amount due, which order shall state the rate at which the teacher is paid according to his contract, the limits of time for which the order pays: *Provided*, That in case the warrants issued on such order shall be presented to the county treasurer and not paid for want of funds, said treasurer shall certify on the back of such order the date of presentation, and thereafter such order shall bear interest at the rate of six per cent per annum until paid, or until the said treasurer shall notify the board issuing such order that he has funds with which to pay the same.

Assignment of pupils

(6426) § **11**. School boards shall have power to assign pupils to the several schools in the township or city by the consent of the parents or guardians of such pupils, to admit non-residents when it can be done without prejudice to the right of resident pupils, but no pupil shall be transferred from one township to another without a majoity vote of the board of each township.

Annual statement.

(6427) § **12**. It shall be the duty of each school board of the several townships and cities of the Territory, annually, at the close

of the school year, to place in the hands of the county superintendent a full, certified statement, itemized, of their receipts and expenditures for the year past, including the assets and liabilities of the township or city, with all books and papers and vouchers relating to the same, to be by said county superintendent examined and, if found to be correct, approved; such statement to be spread upon the minutes of the school board, and in a condensed but fully classified form, published in a newspaper of the county in which the township or city is situated, having the largest circulation among the citizens interested; and for any negligence or failure to perform the duties enjoined by this act, the officers named therein shall be considered guilty of a misdemeanor, punishable by a fine of not exceeding three hundred dollars to be paid into the county school fund.

Enumeration lists.

(6428) § **13**. The school board of each township and city shall, between the first and fifteenth days of May of each year, take or cause to be taken, and forwarded to the county clerk, an enumeration of the names of all persons between the age of six and twenty-one resident within the township or city, designating male and female, white, colored and indians; and the board shall also take, or cause to be taken, an alphabetical list of the resident tax-payers of said township or city and forward the same to the county clerk within the time specified in this section, and the secretary of the board shall enter the same upon the records of the township or city, together with the date that such lists were forwarded as herein provided; and should the board neglect or refuse to comply with the provisions of this section, each member so in default shall be deemed guilty of a misdemeanor and upon conviction subject to a fine not exceeding one hundred dollars,

Assessment and collection.

(6429) § **14**. The county clerk shall upon the property liable to taxation for Territory and county purposes, make the proper computation of annual school tax levied by the school board, in the same manner as for Territorial and county revenue, and shall place the amount of said tax on the tax list, and duplicate thereof, as other taxes are entered, in appropriate columns; and said tax shall be collected by the county treasurer, as other taxes are collected.

ARTICLE 10.—SCHOOL PROPERTY FUNDS AND TAXES.

SECTION.		SECTION.	
1	Property.	3.	Exemptions.
2.	Sale of property.	4.	Site condemned.

Property.

(6430) § **1**. The titles of all property held for the use or benefit of the public schools shall be vested in the school boards and held by them in trust for the city or township, and the school board may sue in its own name for all money due, or to become due, to the board or the school fund; and for any trespass upon or injury or damage to any of the school property of said township or city for the benefit of the school fund of such township or city.

Sale of property.

(6431) § **2**. No school property of any kind shall be sold or

Chap. 79. be conveyed by any school board, except at a regular meeting of the same, and not then without an affirmative recorded vote of at least two-thirds of all the members of said board, and no real estate shall be sold unless authorized by a majority vote of the electors of the township or city.

Exemptions. (6432) § **3.** All property held by the board of education for the use of public schools shall be exempt from taxation and shall not be taken in any manner for any debt due from the city or township.

Site condemned. (6433) § **4.** In case any township or city school board cannot by purchase by [at] reasonable rates, or by donation or otherwise obtain title to the site selected by such school board; or if it be deemed advisable by such school board to add other ground to any school house site already selected; or if, in good faith, but by mistake or otherwise, a school house has been or shall be erected wholly or partially upon any land or lot to which said school board at the time of erection of such building, or any addition thereto, had not acquired title, then, in any such cases, upon the written application of said board, or a majority of the board, it shall be the duty of the probate judge of the county in which such school site is situated to appoint three disinterested free holders of such county or city, and not residents of the school district or ward containing said site, to condemn and appraise such site or addition thereto, who shall take an oath for the faithful performance thereof, and in case such land or lot so condemned, shall be an original selection for the school house site the amount so condemned and appraised shall not exceed one and one-half acres, and if it be for an addition to an existing site, the additional amount condemned and appraised shall not with the original site exceed one and one-half acres. Immediately after their appointment, such appraisers shall proceed to condemn and appraise the value of the sites selected or the addition to such existing sites. And they shall within ten days thereafter make and sign a report describing the land or lot so condemned, the purpose for which it was so condemned and the appraised value thereof, which report shall be by them filed in the office of the register of deeds of the county in which such land or lot is situated, and by such register duly recorded as other instruments of writing affecting the title to real estate are recorded. In appraising any school house site, or addition thereto, to which such school, township or city had not title at the time of erecting thereon any school house or addition thereto, said appraisers shall exclude from their appraisement the value of such school house or addition, and appraise such land or lot at its value exclusive of such building, addition or other improvements placed thereon in good faith, but by mistake of said school board. Within thirty days after the report of said appraisers is filed in the office of the register of deeds, the school board of such township or city, shall pay to the county treasurer of the county in which such condemned land or lot is situated, the amount of the appraised value thereof, and also fifty cents for said register of deeds for recording said report. And upon such payment being made to such county treasurer by

by such township or city school board, the title to such site or addition shall vest in such school board. The owner of the land or lot condemned, or the school board, may appeal from such appraisement to the district court in the same time and manner that appeals are taken from judgment of justices of the peace in civil action. Chap. 79.

ARTICLE 11.—TERRITORIAL OR PERMANENT SCHOOL FUNDS.

SECTION.
1. Territorial or permanent funds.
2. Annual taxation.
3. County school fund.
4. County clerk.
5. Joint district fund.
6 Justice of the peace.

Territorial or permanent fund.

(6434) § **1**. All the land, money, or other property granted or bequeathed, or which may be granted or in any manner conveyed to this Territory for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest or conveyance. The following are hereby declared to be perpetual funds for public school purposes, of which the annual interest or income only can be appropriated, to wit:

First. Such per centum as may hereafter be granted by Congress on the sale of lands in the Territory.

Second. All moneys arising from the sale of sections numbers sixteen and thirty-six in each township in this Territory, and the lands that may be selected in lieu thereof.

Third. The proceeds of all lands that have been or may hereafter be granted to this Territory, whereby the terms and conditions of said grant, the same are not to be otherwise appropriated.

Fourth. The net proceeds of lands and other property and effects that may come to the Territory by escheat, or forfeiture, or for unclaimed dividends, or distributed shares of the estate of deceased persons.

Annual taxation.

(6435) § **2**. The county commissioners shall at the time the annual taxes for the Territorial and county purposes are levied, levy on the taxable property of the county, a tax not to exceed one (1) per cent, which shall be collected as other taxes; and the money so realized, together with the proceeds of all moneys collected from fines, forfeitures, penalties, proceeds from the sale of estrays and all moneys paid by persons as equivalent for exemption from military duty, and all moneys collected from marriage licenses, shall constitute a county school fund, and be appropriated exclusively for the purpose of establishing and supporting public school for not less than three nor more than nine months in each year, and defraying current expenses of the same, of every description; and said county school fund, shall be apportioned to each school township in said county in proportion to the number of children over the age of six years and under the age of twenty-one years, resident therein, as shown by the last annual enumeration of the same.

County school fund.

(6436) § **3**. In each school district, school township and city, as the case may be, the electors thereof may at the annual elec-

Chap. 79.

tion for the choice of members of the school board vote upon the district, township or city, a school tax of not to exceed one (1) per cent for that year, to be used for the purposes named in the preceding section, and for the purpose of building, repairing and improving school houses, of procuring furniture, fuel, libraries and apparatus, and for all other necessary incidental expenses. The secretary of the board shall certify to the county clerk the number of so voted, who is hereby authorized and required to place the mills same on the tax-rolls of said county, as a levy on the taxable property in that district, township or city, to be collected by the treasurer of the county, as other taxes, and payment on orders and warrants drawn by authority of the school board of the district, township or city.

County clerks

(6437) § **4**. The county clerk of each county shall, on the first Mondays of January and July of each year, make out and transmit to the county superintendent a true statement of any county school money then in the county treasury.

Joint district fund

(6438) § **5**. Whenever it shall appear that any school township in this Territory is situated in two or more counties, it shall be the duty of the treasurer of the counties having the smaller amount of territory in said township to transfer to the treasurer of the county having the greater amount of territory of said township, before the 10th of January, first day of July and 20th of September of each year, all moneys in his hands belonging to said township and the treasurer receiving said money shall issue therefor, and forward to the treasurer so sending the money, receipts in triplicate, one of which said treasurer shall file with the county clerk of the county and the board of county commissioners thereof shall give said treasurer proper credit therefor. One of said receipts shall be sent to the county clerk of the county to which the money was sent, who shall charge the county treasurer with the amount thereof.

Justice of the peace.

(6439) § **6**. Each justice of the peace shall report to the county clerk on the first day of January and on the first day of July of each year, the amount received from the proceeds of fines and estrays during the months preceding, and belonging to the school fund of the county, and each justice of the peace, at the time of making his report to the county clerk, shall promptly pay all of such proceeds to the county treasurer, to be apportioned by the superintendent at the next ensuing semi-annual dividend.

ARTICLE 12.—MANAGEMENT OF SCHOOL FUNDS. Chap. 79.

SECTION.
1. Board of commissioners.
2. Same, meetings.
3. Record of proceedings.
4. Same.
5. Apportionment and transmission.
6. Erection of buildings.
7. Loan and security.
8. Appraisement of realty.
9. Interest.
10 Method of obtaining loans.
11. Same, county commissioners.
12. Buying in incumbered realty.
13. Assignment of claim.
14. Renewal of notes and mortgages.
15. Default in payment.
16. Bidding in property.
17. School fund credits.
18. County treasurer's record.
19. County clerk's record and statement.
20. Treasurer and clerk liable.
21. Time give delinquent debtors.
22. School fund, loss.
23. Same, interest.
24 Tax sale and mortgage.

(6440) § **1**. The Territorial Superintendent of Public Instruction, the Territorial Secretary and the Territorial Treasurer shall constitute a board of commissioners for the management and investment of the Territorial permanent school, Territorial Normal School and Territorial University funds. Such board shall be organized as follows: The Secretary of the Territory shall be the president, and the Superintendent of Public Instruction shall be the secretary thereof. In the absence of either of said officers, the Territorial Treasurer shall as president, or secretary, as the case may be. Such commissioners when acting as such, must act personally; no member thereof can be represented in such board or by any other person. Management of school fund.

(6441) § **2**. Such board of commissioners shall meet regularly in the office of the Territorial Superintendent of Public Instruction on the last Saturday of May and November of each year. Special meetings of the board may be had at any time at the call of any member thereof. Same, meetings

(6442) § **3**. Said commission shall keep in a suitable book a correct record of all their proceedings at every session of the board, which record shall, at the close of the session be signed by the president and secretary. Record of proceedings.

(6443) § **4**. They may also keep such other books as may be necessary to keep the record of their office. Such record books shall be ruled so as to enable the board to register the name, residence and location of persons to whom money belonging to the school fund may be loaned, together with a description of the land upon which it is secured. Same.

(6444) § **5**. Whenever there accumulates in the hands of the Territorial Treasurer the sum of one thousand dollars belonging to the permanent school fund of the Territory, it shall be his duty to call said board together, and they shall apportion that money to the various counties of the Territory, in proportion to the scholastic population of each; thereupon it shall be the duty of the Territorial Treasurer to transmit to the treasurer of the various counties, the sum so apportioned to each county, and the treasurer of the county shall hold the same as a part of the permanent school fund of this Territory, to be dealt with as hereinafter provided. It shall be the duty of the auditing officer of the Territory to to notify the county clerks of the various counties Apportionment and transmission

that the money has been forwarded to the county treasurer, and the amount thereof, and thereupon the auditing officer of the Territory shall credit the Territorial Treasurer with the money by him so forwarded, and shall charge the same to the various counties to which it is transferred, and the various county clerks shall charge their respective county treasurers therewith as permanent school funds.

Erection of buildings,

(6445) § **6**. The Territorial University and Normal Sihool funds, shall for the next five years, be disbursed by the Territorial school fund commissioners in erecting buildings for the Territorial University, the Territorial Normal School and the maintenance of schools therein. Said Territorial University and Normal School funds shall thereafter be disbursed as may be provided by law.

Loan aud security.

(6446) § **7**. For the purpose of securing the permanent school fund against loss, and for accumulating interest thereon, it shall be the duty of the county commissioners to loan out the permanent school fund forwarded to the county treasury as the same may come into his hands; but no loan to any one person or company shall exceed the sum of five hundred dollars, nor shall any loan of the permanent school fund be made to the county clerk, county treasurer, or to any of the commissioners. Said loan shall not be made for a shorter time than one year, nor for a longer time than five years. The payment of the money thus borrowed, together with the interest thereon at the rate of not less than six nor more than ten per cent per annum, to be paid semi-annually in advance, shall be secured by promissory notes, executed by the party borrowing and by two good sureties, resident free-holders of the county, and also by first mortgage on unincumbered real estate, which, exclusive of all buildings, is appraised by appraisers as hereinafter provided for, as worth double the amount of money loaned thereon; which such real estate must be located in the county in which such loan is made.

Appraisement of realty

(6447) § **8**. The value of the real estate offered as security for money borrowed from the permanent school fund as hereinafter provided, shall be affixed by three appraisers under oath, who shall be selected by the county clerk, and in making the appraisement the appraisers shall not take into consideration any buildings that may be on the land; said appraisers shall be allowed for their services the sum of fifty cents each, to be paid by the party borrowing, and the party borrowing shall also pay for the recording of the mortgage given to secure the loan.

Interest,

(6448) § **9**. Interest not paid when due shall bear interest at the same rate as the principal.

Method of obtaining loans.

(6449) § **10**. When any person desires to borrow money from the permanent school fund, he shall apply to the county clerk, and if, in the opinion of the clerk, it would be to the interest of the school fund to grant such application, he shall order the necessary papers to be made out to secure the amount to be borrowed, as hereinbefore required; when they are made out they shall be presented to the county clerk, who shall, after he approves the note and sureties, thereon, and the mortgage, endorse thereon, "accepted," and sign his name below the same, he shall also examine the title

of any real estate offered as security, and make and preserve an abstract of such title, and cause the land to be appraised as before provided, all of which shall be certified to by him, and submitted to the county commissioners at their first meeting thereafter; he may charge a fee of not exceeding two dollars for making abstracts of title for such tract, which amount shall be paid by the party borrowing. The clerk shall require the borrower to make an affidavit before him, that there are no liens upon nor claims against the land offered as security, that no improvements have been made on said land within the time allowed for filing mecanics' lien therefor and that none are now being make thereon; or if such there be, they are fully paid for; thereupon the clerk shall give to the party borrowing, a copy of the promissory note certified over his hand and official seal, that it is a correct copy of the same which together with the mortgage securing it has been filed in his office, and upon the party presenting said certificate, together with the warrant drawn by the clerk upon the treasurer, shall pay the amount specified in such copy of such note and warrant out of the permanent school funds in his possession, and retain the said copy and warrant and the vouchers for the money so paid out. The county clerk shall file the mortgage for record, and after being duly recorded, shall retain said note and mortgage in his office as part of the record thereof, and shall thereupon notify the auditing officer of the Territory that the loan has been made, giving the name of the borrower, his sureties, and description of the land mortgaged, the amount of the money loaned, and the time for which the loan was made: *Provided*, The security accepted by the said clerk shall be approved by said board of county commissioners before the borrower shall receive the money so borrowed.

Same, county commissioners.

(6450) § **11.** At each regular meeting of the county commissioners, the clerk shall make a full statement of all money received by the county and belonging to the permanent school fund, and of the various applications for loans, and he shall also submit for their examination all notes and mortgages, and abstracts of titles connected therewith, which have come into his possession since the last meeting of the said board. Said board at the first meeting after such papers are submitted to them, shall either approve or disapprove of the said applications for loans, and should they disapprove of any applications for loans, or security thus reported, they may require the applicant to give additional security within thirty days. When any person desires to pay either principal or interest due the school fund, he shall obtain a certificate from the county clerk, specifying the amount due from such person to the permanent school fund, stating whether it is principal or interest or both, and the amount of each, upon the presentation of this certificate to the county treasurer, the treasurer shall receive the amount specified from the person presenting the certificate, and shall endorse on said certificate the date and his name, and upon return to the county clerk of such certificate so endorsed, the party returning it shall have a receipt for the amount so paid, and not otherwise.

Buying in incumbered realty.

(6451) § **12.** If by oversight, any portion of the school fund has been loaned upon real estate security, upon which exists a prior incumbrance other than for taxes, the county commissioners shall have authority in their discretion, if they deem it necessary, to remove said prior incumbrance by purchasing the same, in order that said fund may ultimately realize the money secured thereon, and also the amount paid for the prior incumbrance. They are authorized to appropriate so much money out of the permanent school funds, if any there be within their county, as shall be necessary to remove said prior incumbrance: *Provided*, That said incumbrance in the aggregate shall not exceed one-half the actual value of the real estate.

Assignment of claim.

(6452) § **13.** The county commissioners may by resolution direct the county clerk to assign, without recourse, any school fund claim to any person having a lien on the premises incumbered by the school fund loan, upon the full payment of the amount due said fund, but not otherwise.

Renewal of notes and mortgages,

(6453) § **14.** Such board may, when deemed necessary, affect the county clerk to examine the securities aforesaid, make abstract of title to the land mortgaged, and make out a complete statement thereof for such board; and under the direction of such board, or committee thereof, to procure the renewal of notes and mortgages by persons desiring to renew, upon such terms, as to time and security, in all respects as in making new loans. Any such agent may, with the consent of such board or committee, take from any person responsible for any loan, any additional security by way of bond or mortgage, or both, in case where the property mortgaged is inadequate security for the sum loaned, and the applicant shall pay all interests and procure a written consent of the securities on the note; but in all cases of renewal of loans, as well as in cases of new loans, abstracts of title shall be presented and filed with the mortgage, which shall show that the title to the mortgaged premises is in the mortgagor, free and clear of any incumbrance or debt.

Default in payment.

(6454) § **15.** In case the persons executing said mortgage shall neglect to pay the sums due thereon, or to renew the loan, if due, within thirty days from the time the same becomes due, the county commissioners may cause suit to be brought and prosecuted with the utmost diligence to procure said fund; and in any action in favor of a county for the use of the school fund, an injunction may issue without bond. In any such action where service is made by publication, default and judgment may be entered and enforced without bond. In all such suits the court shall give judgment for the plaintiff for such an amount as part of the costs, as will be sufficient compensation for the plaintiff's attorney in the case, not to exceed ten per cent on the amount for which judgment is rendered, and in no case to exceed twenty-five dollars.

Bidding in property.

(6455) § **16.** In case of sales of lands on execution founded on any such mortgage or contract, the county attorney, or other person authorized by said board, shall bid on behalf of the county for the use of the county, such sum as the interests of said county

may require, and if struck off to the county, the land shall be held and disposed of by the county board and the proceeds thereof paid to the county treasurer.

School fund credits

(6456) § **17**. All contracts, notes and mortgages given to the permanent school fund shall be made payable to the county controlling them; but no such contracts, notes or mortgages shall be invalid because of any technical defect therein, nor because they are made payable to any other payee; but such notes and mortgages shall be held to belong to said connty for the use of said permanent school fund, and suits may be maintained thereon, in the name of the county, with the same effect as if they were regularly and properly drawn to the county.

County treasurer's records.

(6457) § **18**. Each county treasurer shall immediately upon receiviag or paying out any money belonging to the school fund, make entry thereof on books kept by him for that purpose, distinguishing between principal and interest, and shall keep a separate account showing all money due the school fund, principal or interest, and designating the amount of each, and from whom due; and his books shall at all times present a clear and intelligent statement of the school funds in his hands, said books shall at all times be open to the inspection of any householder or tax payer in the county.

County clerk's record and statement

(6458) § **19**. Each county clerk shall keep in his office, in books provided for that purpose, an account to be known as the permanent school fund account, in which he shall enter all notes, bonds, mortgages and assets of every kind and description which may come into his hands, and he shall open accounts with the county treasurer, in which he shall charge him with all money in his hands at the time his account was opened, and also with all money which may thereafter be paid to the treasurer, as shown by the certificates before provided for, distinguishing between principal and interest, which shall be kept in separate accounts, and shall on the third Monday in May, the first Monday of October, and the third Monday of December, in each and every year, make a complete settlement of the school fund account with the county treasurer, from the time of the last settlement, and at each regular meeting of the board of county commisioners, the county clerk shall submit a full report of his settlement with the county treasurer, and also of all notes, bonds, mortgages and assets of every kind and description, which have come into his hands since the last meeting of the board.

Treasurer and clerk liable.

(6459) § **20**. Any county treasurer or clerk, failing or neglecting to perform any of the duties which are required of him by the provisions of this article, shall be liable to a penalty of not less than one hundred dollars, nor more than five hundred dollars, to be recovered by civil action in the district court, by the board of county commissioners in the name of the county, the judgment to be entered against the party defendant and his bondsmen, and the proceeds to go to the county school fund.

Time given delinquent debtors.

(6460) § **21**. Whenever it shall be evident to the county commissioners that the interest of the school fund will be injured by the immediate foreclosure of any mortgage, or the sale of any

Chap. 79. mortgaged premises, they may give such reasonable time as they may deem for the best interests of the school fund.

School fund, loss.

(6461) § **22**. Lapse of time shall in nowise bar any action brought or to be brought, or any contract for any part of the school fund, nor shall such lapse of time prevent a recovery. In all cases where losses occur to the permanent school fund in any of the counties, from any cause whatsoever, the loss shall be sustained by the county, and it shall be the duty of the county commissioners to order a warrant drawn upon the county funds in the hands of the county treasurer for the amount of such loss. The county clerk when drawing such warrant shall credit the treasurer on behalf of the county fund with that amount and charge him with the sum as a part of the permanent school fund in his hands, and on receipt of such warrant, the treasurer shall transfer from the county fund to the permanent school fund, the amount thereof: *If however*, The loss so sustained be afterwards recovered from any officer, or his bondsmen, or realized from property mortgaged, it shall be paid into the county treasury for the use and benefit of the county fund.

Same, interest.

(6462) § **23**. It shall be the duty of the county clerk on the first Monday of May and November of each year, to report to the Territorial auditing officer, the amount of money collected as interest on the permanent school fund, and the county clerk shall at the same time transfer all money received as interest on the loans of the permanent school fund in his county to the county common school fund to be used in the support of common schools in the county, as provided in this act.

Tax sale and mortgage.

(6463) § **24**. If any lands upon which there is any school fund mortgage be sold for taxes, such sale shall not defeat or in any manner impair the lien of such mortgage, but the purchaser shall hold the land subject to the lien of the school fund mortgage.

ARTICLE 13.—SEPARATE SCHOOLS.

SECTION.		SECTION.	
1.	Separate schools	6.	Separate school tax.
2	Election.	7.	Term.
3.	Same, result.	8.	Failure to comply.
4.	Same, provisions for.	9.	Remedy for grievance.
5.	Same, returns and canvass.		

Separate schools.

(6464) § **1**. Separate schools for the education of white and colored children may be established in the Territory as follows, and in no other way.

Election.

(6465) § **2**. In each county at the first election for township school officers and on the first Tuesday of April, 1891, and on the first Tuesday of April every three years thereafter, there shall be held an election where all persons who are qualified school electors may vote for or against the maintenance of separate schools for white and colored children in said county.

Same, result.

(6466) § **3**. If a majority of the votes cast at said election be against the establishment of separate schools in said county, then the white and colored children shall attend the same school in

such county; but if a majority of the votes cast be in favor of the establishment of separate schools for white and colored children, then there shall be established such separate schools for white and colored children as hereinafter provided.

Same, provisions for.

(6467) § **4**. Not more than twenty days nor less than ten days prior to said election the county commissioners of each county shall appoint in each election precinct in their respective counties two judges and one clerk, whose duty it shall be to hold said election: *Provided*, That at first election, herein provided for, the election precincts be the same as those designated by the Governor in his proclamation calling an election for delegates to Congress upon November fourth, one thousand eight hundred and ninety.

Same, returns and canvass.

(6468) § **5**. Said judges of election shall within five days after said election make certified returns of the result of said election to the board of county commissioners, who shall within five days after such returns have been made, canvass the same, and publish the result in some newspaper published in their county.

Separate school tax.

(6469) § **6**. In all counties in which the electors have voted to establish separate schools for white and colored children, the board of commissioners shall annually levy a tax in addition to the tax provided for in section eighty-six of this act, sufficient to maintain such separate schools

Term.

(6470) § **7**. When separate schools are established as provided in this act, the term of school shall be the same in each school in each year and shall be provided with equal school facilities.

Failure to comply.

(6471) § **8**. Any failure to comply with any and all the provisions of this act, shall render such act of establishing separate schools void, and immediately all the children of school age in such county shall be admitted to the school or schools of their respective district.

Remedy for grievance

(6472) § **9**. Any person aggrieved by any actions on the part of a district or township school board, or board of county commissioners in failing to comply with the provisions of this act, may have his remedy by a writ of mandamus against such district or township school board or board of county commissioners in any court having jurisdiction, and such action may be brought in the name of the party aggrieved or his or her parent or guardian.

ARTICLE 14.—SCHOOL DISTRICTS ESTABLISHED AND SCHOOL SITES LOCATED.

AN ACT Establishing the School Districts for a Public School System in the Territory of Oklahoma, and Providing for Locating the School Sites Therein.

[Took effect October 11, 1890.]

SECTION.
1. School townships
2. School districts.
3. Township organization.
4. Town and city organization.
5. Adjacent Territory.

Chap. 79. *Be it enacted by the Legislative Assembly of the Territory of Oklahoma.*

School township

(6473) § **1.** The Territory of Oklahoma is hereby divided into school townships as follows: All boundry lines extending from east to west shall be one-half mile north of and extend parallel with the Congressional township lines east and west, and all bonndary lines extending north and south shall be one-half miles east of and extend parallel with the Congressional township lines north and south.

School districts.

(6474) § **2.** Each school township shall be divided into four districts of equal size and square form with site for school building fixed as near the center as practicable. But school houses already built shall remain as at present located until changed to the center by a majority vote of the qualified voters of the district at an election called by the board of such townships, which election shall be called and held in the manner provided in the act for other special elections: *Provided,* That the number of districts in any school township, and the boundaries thereof, may by action of the township board, subject to the approval of the county superintendent, be made to conform to such existing topographical peculiarities as shall render uniform districting impracticable: *And provided also,* That where such topographical or physical conditions exist in two or more adjacent townships, the boundary lines of said townships may be changed, regardless of that township or county lines, by joint action of the township boards concerned, but subject to the approval as above required. And in case two or more counties are concerned, it shall require the approval of the county superintendents and boards of county commissioners, jointly, of said counties: *And provided further,* That in sparsely settled communities, such school townships and districts shall be formed by the county superintendent and county commissioners as shall meet the requirements of such communities: *And provided further,* That any district containing a town remote from the center thereof, or any district having a oopulation so distributed as to need a school or schools, other than at the center of the district, such school or schools may be so located.

Township organization

(6475) § **3.** Each school township shall be under the control of a township board of education, which shall consist of one member elected from each school district and president elected by the township at large.

Town and city organization

(6476) § **4.** All towns having a population of three hundred or over, shall be independent school districts, and be divided into not less than four wards for school purposes. Such independent district school boards shall consist of one member elected from each ward, and a president elected by the district.

Adjacent territory

(6477) § **5.** Territory outside any city limits, but adjacent thereto, may be attached to such city for school purposes upon application to the board of county commissioners by a majority of the electors of such adjacent territory, the school board of such city consenting thereto; and upon such application being made, the board of county commissioners shall, if they deem it for the best interests of all parties concerned, issud an order attaching

said territory to such city for school purposes only; and the taxable property of such adjacent territory, shall be subject to taxation and shall bear its full proportion of all expenses incurred in the erection of school buildings, and in maintaining the schools of such city: *Provided*, That any school property within such adjacent territory and belonging to the township shall be paid for by said city school board to the township school board upon due appraisement of said property: *Provided further*, That said territory may in like manner be detached from said city.

CHAPTER LXXX.—SPECIFIC AND PREVENTIVE RELIEF.

ARTICLE.
1. General provisions
2. Specific relief.
3. Preventive relief

ARTICLE 1.—GENERAL PRINCIPLES.

SECTION.
1 Specific relief
2. Method of giving specific relief
3. Limitation.
4. Preventive relief.

(6478) § **1**. Specific or preventive relief may be given in the cases specified in this chapter and in no others. Specific relief.

(6479) § **2**. Specific relief is given: Methods of giving specific relief

First. By taking possession of a thing and delivering it to a claimant.

Second. By compelling a party himself to do that which ought to be done; or,

Third. By declaring and determining the rights of parties, otherwise than by an award of damages.

(6480) § **3**. Preventive relief is given by prohibiting a party from doing that which ought not to be done, Preventive relief

(6481) § **4**. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case. Limitation of specific and preventive relief.

ARTICLE 2.—SPECIFIC RELIEF.

Possession of Real Property.

SECTION.
1. Relief for possession of real property.

Possession of Personal Property.

SECTION.
2 Recovery of personal property.
3. Specific delivery of personal property.

ARTICLE 2—continued.

Specific Performance of Obligations.

SECTION.
4. Specific performance of obligations.
5. This remedy is mutual.
6. Different presumptions.
7. When only one has signed contract; performance by other.
8. Performance enforced instead of damages.
9. Certain obligations cannot be specifically enforced.
10. Against certain parties.
11. In favor of certain parties.
12. Agreement for sale of property when title fails.
13. Against subsequent holder of real property.

Revision of Contracts.

SECTION.
14. Revised for mistake or fraud.
15. Equitable intention presumed.
16. Meaning in contract not language to govern.
17. First revised, then enforced.

Rescission of Contract.

SECTION.
18 Rescission may be adjudged, when.
19. Not for mere mistake.
20 Compensation granted

Cancellation of Instruments.

SECTION.
21. Cancellation may be adjudged, when.
22. Instrument valid on its face.
23. Partial cancellation.

Relief for possession of real property, how enforced.

(6482) § **1**. A person entitled to specific real property, by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by civil procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property.

Recovery of personal property

(6483) § **2**. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by civil procedure.

Specific delivery of personal property.

(6484) § **3**. Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

Specific performance of obligations

(6485) § **4**. Except as otherwise provided in this article, the specific performance of an obligation may be compelled.

This remedy is mutual

(6486) § **5**. Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

(6487) § **6**. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved. Different presumptions as to real and personal property.

(6488) § **7**. A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance. When only one has signed contract, though other has performed.

(6489) § **8**. A contract otherwise proper to be specifically enforced may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same. Performance may be enforced instead of damages

(6490) § **9**. The following obligations cannot be specifically enforced. Certain obligations cannot be specifically enforced.

First. An obligation to render personal service.

Second. An obligation to employ another in personal service.

Third. An agreement to submit a controversy to arbitration.

Fourth. An agreement to perform an act which the party had not power lawfully to perform when required to do so.

Fifth. An agreement to procure the act or consent of the wife or the contracting party, or of any other third person; or,

Sixth. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

(6491) § **10**. Specific performance cannot be enforced against a party to a contract, in any of the following cases: Against certain parties specific performance cannot be enforced.

First. If he has not received an adequate consideration for the contract.

Second. If it is not, as to him, just and reasonable.

Third. If his assent was obtained by misrepresentation, concealment, circumvention, or unfair practice of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,

Fourth. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

(6492) § **11**. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial or capable of being fully compensated; in which case specific performance may be compelled, upon full compensation being made for the default. In favor of certain parties cannot be enforced.

(6493) § **12**. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt. Agreement for sale of property when title fails.

Against subsequent holder of real property

(6494) § **13.** Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

Contract may be revised for mistake or fraud.

(6495) § **14.** When through fraud, or mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith, and for value.

Equitable intention presumed.

(6496) § **15.** For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

Meaning of contract of language to be considered.

(6497) § **16.** In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

First revised then enforced.

(6498) § **17.** A contract may be first revised and then specifically enforced.

Rescission of contract may be adjudged, when.

(6499) § **18.** The rescission of a written contract may be adjudged on the application of a party aggrieved:

First. In any of the cases mentioned in section 892; or,

Second. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,

Third. When the public interest will be prejudiced by permitting it to stand.

Rescission not adjudged for mere mistake

(6500) § **19.** Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same condition as if the contract had not been made.

On recission compensation may be granted

(6501) § **20.** On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Cancellation may be adjudged when.

(6502) § **21.** A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may upon his application, be so adjudged and ordered to be delivered up or cancelled.

Instrument vaild on its face not deemed capable of causing injury

(6503) § **22.** An instrument, the validity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury within the provisions of the last section.

Partial cancellation.

(6504) § **23.** Where an instrument is evidence of different rights or obligations, it may be cancelled in part, and allowed to stand for the residue.

SECTION.
1. By injunction.
2. Regulated, how.
3. Injunction allowed, when.
4. Injunction cannot be granted, when.

(6505) § **1**. Preventitive relief is granted by injunction, provisional or final. Preventive relief by injunction.

(6506) § **2**. Provisional injunctions are regulated by civil procedure. How regulated.

(6507) § **3**. Except where otherwise provided by this chapter, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant: Injunction allowed, when.

First. Where pecuniary compensation would not afford adequate relief.

Second. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

Third. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,

Fourth. Where the obligation arises from a trust.

(6508) § **4**. An injunction cannot be granted: Injunction cannot be granted, when.

First. To stay a judicial proceeding dending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

Second. To stay proceedings in a court of the United States.

Third. To stay proceedings in a state upon a judgment of a court of that state.

Fourth. To prevent the execution of a public statute, by officers of the law, for the public benefit.

Fifth. To prevent the breach of a contract, the performance of which would not be specifically enforced.

Sixth. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

Seventh. To prevent a legislative act by a municipal corporation.

CHAPTER LXXXI.—STATUTES.

AN ACT Defining and Construing the Statutes of Oklahoma.

[Took effect December 25, 1890.]

SECTION.
1. Statutes defined.
2. Original acts shall govern.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

(6509) § **1**. The Statutes of Oklahoma are hereby declared to be: Statutes defined.

First. Original Acts enacted by the Legislative Assembly.

Second. Statutes taken from other sources and adopted and

Chap. 82. enacted by the Legislative Assembly as statutes of this Territory.

Original acts shall govern.

(6510) § **2**. In all cases where there is in any wise a conflict between original acts and adopted statutes, the original acts shall govern and the adopted statutes shall be deemed as repealed, amended or modified thereby without any reference to the date of the approval of such original acts.

CHAPTER LXXXII.—TERRITORIAL OFFICERS.

AN ACT to create the offices of Territorial Auditor, Territorial Treasurer, Territorial Attorney General and prescribing the several duties and fixing the salaries thereof

[Took effect December 3, 1890.]

ARTICLE.
1. Auditor
2. Superintendent of insurance.
3 Treasurer
4. Attorney General.
5. Salaries and residence.
6. Powers and duties of Governor.

ARTICLE 1.—TERRITORIAL AUDITOR.

SECTION.
1. Auditor.
2. Claims against Territory.
3. Warrants, amounts drawn in.
4. Same, redemption.
5, Same, how recorded.
6. Auditor's account of funds
7 Same, annual report.
8. Same, county assets.
9. Same, accounts inspected.
10. Newly taxable lands.
11. Uniformity in assessing.
12. Correction of tax errors.
13. Provision for certain expenses.
14. Revenue officer's work incomplete.
15. Witnesses' oath.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Auditor

(6511) § **1**. The Superintendent of Public Instruction shall be *ex officio* Territorial Auditor and perform the duties of that office.

Claims against Territory.

(6512) § **2**. All accounts of claims against the Territory, which shall be by law directed to be paid out of the treasury thereof, shall be presented to the Auditor, who shall examine and adjust the same, and, for the sums which shall be found due from the Territory shall issue warrants payable at the Territorial treasury, which shall be numbered consecutively and each shall specify the date of its issue and the name of the person to whom payable, and the number, date of issue, and name of the person to whom payable of each warrant, and corresponding thereto, shall be entered upon a stub for each warrant separately, and those stubs shall be carefully preserved by the Auditor in his office.

Warrants, amounts.

(6513) § **3**. When the amount due from the Territory to any one person is ascertained and adjusted, the Auditor if requested shall divide the sum into amounts of from one to twenty dollars to suit the convenience of the person entitled thereto, and shall issue warrants for the several amounts separately, into which the sum shall be divided, and equal to the whole amount thereof, and any warrants already issued that may be returned by the holder

thereof to the auditor, he may cancel and issue in lieu thereof small warrants as herein provided, equal in the aggregate to the face value of the warrants cancelled.

Same, redemption.

(6514) § **4**. For the redemption of all warrants issued in conformity with the provisions of this chapter, the credit of the Territory is hereby pledged.

Same, how recorded.

(6515) § **5**. The Auditor shall enter in progressive order, in a book or books to be provided by him for that purpose, the number of each warrant by him issued, the amount thereof, the date of its issue and the name of the person to whom issued and the fund on which said warrant is drawn.

Auditor's accounts of funds.

(6516) § **6**. The Auditor shall make and keep in his office, in suitable books to be procured at the expense of the Territory, fair and accurate accounts showing the debits and credits of each separate fund or appropriation by giving such funds credit for the full amounts appropriated by law, and by charging to such funds severally the amounts drawn against them from time to time, and he shall also keep records of all such public accounts and other documents as have been or may be by law made returnable to his office and shall keep a file in progressive order of all receipts and warrants returned as redeemed from the Territorial Treasurer, and other vouchers relative to the business of his office.

Same, annual report.

(6517) § **7**. The Auditor shall submit an annual report to the Governor of the Territory, on or before the fifteenth day of December, and also a biennial report preceding each regular session of the Legislative Assembly, which reports shall show for the preceding fiscal term ending on the thirtieth day of November:

First. A statement of date, number, and amount of each warrant, the person in whose favor, and on what fund each warrant is drawn.

Second. The total amount of warrants redeemed and returned to him by the Territorial Treasurer.

Third. A statement of the accounts of the several funds and appropriations, which shallshow thesums appropriated for each fund the amounts of warrants on each fund, and the unexpired balance of the same.

Fourth. Such remarks on the finances of the Territory as he shall deem proper, which report shall be transmitted by the Governor to the Legislative Assembly.

Same, county assets

(6518) § **8**. The Auditor shall transmit to the Territorial Treasurer a statement of the assets of each county of the Territory as soon as practicable after the abstracts of such assets shall be received from the county clerks of the several counties.

Same, accounts inspected.

(6519) § **9**. Whenever required he shall submit his books, accounts and vouchers to the inspectton of the Legislative Assembly, or any committee appointed for that purpose by the Legislature or Governor.

Newly taxable lands.

(6520) § **10**. He shall transmit to the county clerk of each county, on or before the first day of May in each year, a list of lands within such county which shall have become subject to taxation within the preceeding year, agreeable to the information by him received from the land offices of the Territory.

Uniformity in assessing.

(6521) § **11**. He shall from time to time prepare and transmit to the county clerk of each county, such general forms and instructions in conformity with the laws in force, as in his opinion maybe necessary to secure uniformity in assessing, charging and collecting and accounting for the public revenue, and assessors and treasurers shall observe such forms and instructions.

Correction of tax errors

(6522) § **12**. The Auditor is hereby authorized to remit any penalty for the non-payment of taxes, when satisfied that the same is improperly charged, or that such penalty occurred in consequence of the negligence or error of any officer required to do any duty relative to the levy and collection of such taxes, and may from time to time, correct all errors which he shall discover in the duplication of taxes assessed in any county on a showing that the same corrections have been ordered by the county commissioners.

Provision for certain expenses

(6523) § **13**. The expense of procuring books directed by this act to be procured, and the copies of entries, surveys and other documents from the land offices, and all other contingent expenses of his office, shall be paid by the Auditor out of the contingent fund appropriated for the use of said office.

Revenue officer's work incomplete.

(6524) § **14**. If any officer concerned in the collection of the Territorial revenue shall fail to collect, to make proper return, to make settlement, or to pay over all the money by him received and belonging to the Territory at the time and in the manner required by law, the Auditor of the Territory, shall, after the expiration of fifteen days, next after the expiration of the time within which such are by law required to be performed, transmit to the county clerk of the proper county, a statement of the sum claimed by the Territory from such delinquent officer, with direction for such county clerk to proceed against such delinquent officer, and his securities in the manner prescribed by law, provided that when the Auditor of the Territory shall be satisfied that such default results from some inevitable accident, and not from the negligence of such officer he may at his discretion postpone the instructions for bringing suit for any time not exceeding sixty days.

Witnesses, oath.

(6525) § **15**. The Auditor is authorized to administer an oath to accountants and witnesses in support of the justice of such accounts as may be exhibited to him for liquidation and to certify the same accordingly.

ARTICLE 2.—SUPERINTENDENT OF INSURANCE.

SECTION.
1. Secretary Superintendent of Insurauce.

Secretary, superintendent of insurance.

(6526) § **1**. The Secretary of the Territory of Oklahom-, shall be *ex-officio* Superintendent of Insurance, and shall discharge such duties as [such] commissioner of insurance as may be prescribed by law.

ARTICLL 3.—TERRITORIAL TREASURER. Chap. 82.

SECTION.
1. Treasurer, how chosen.
2. Custody of money.
3. Receipts and disbursements
4. Account with counties.
5. Territorial warrants.
6. Warrants, when interest allowed.
7. Warrants deposited with Auditor.
8. Annual report to Governor.
9. Accounts submitted, cash counted.
10. Fees prohibited.
11. Treasurer to pay certain loss.

How chosen.

(6527) § **1**. There shall be nominated by the Governor, and by and with the consent of the Council shall be appointed, a Territorial Treasurer, who shall hold his office for the term of two years and until his successor is appointed and qualified.

Custody of money.

(6528) § **2**. He shall have charge of and safely keep all public moneys which shall be paid into the Territorial Treasury, and pay out the same as directed by law, and perform all such other duties as now are, or may hereafter be required of him by law.

Receipts and disbursements

(6529) § **3**. He shall keep an acurate account of the receipts and disqursements of the treasury, in books provided for that purpose at the expense of the Territory, in which he shall specify the names of persons from whom received, to whom paid, on what account the same is received or paid out, and the time of such receipt or payment.

Account with counties,

(6530) § **4**. He shall also keep an account with each organized county of the Territory, in which each county shall be charged with the amount of the tax levied according to the statement of assessments and levy transmitted to him by the Territorial Auditor and credited by the amounts received from the county treasurer of such counties.

Territorial warrants.

(6531) § **5**. He shall receive in payment for public dues, the warrants drawn by the Auditor of the Territory, in conformity with law, or redeem the same if there be money in the treasury appropriated for that purpose and on redeeming such warrant, or receiving the same in payment, he shall cause the person presenting such warrant to endorse the same; and the Treasurer shall write on the face of the same "redeemed" and shall enter in his book, in separate columns the number of such warrant, its date, amount, and the name of the person to whom payable, the date of the payment and the amount of interest, if any, paid thereon.

Warrants, when interest allowed

(6532) § **6**. When any warrant shall be presented to the Treasurer for redemption, and there shall be no funds in the treasury appropriated for that purpose, the Treasurer of the Territory shall endorse thereon the date of its presentation, with his signature thereto, and thereafter such warrant shall draw interest at the rate of six per cent per annum, and whenever there shall be funds in the treasury for the redemption of warrants so presented and endorsed, the Treasurer shall give notice of the fact in some newspaper published at the seat of government, and at the expiration of thirty days after the date of such notice, the interest on such warrant shall cease.

Warrants deposited with auditor,

(6533) § **7**. He shall on the last day of March, June, September and November deposit in the office of the Auditor of the Ter-

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ritory, all warrants by him redeemed or received in payment at the treasury, and take the Auditor's receipt therefor.

Annual report to Governor.

(6534) § **8.** He shall submit to the Governor annually on or before the fifteenth days of December, and also biennially preceding each regular session of the Legislative Assembly a report containing a full and true exhibit of the state of public accounts and funds, the amount by him received, the amount paid out during the preceding fiscal term ending on the thirtieth day of November and the balance remaining in the treasury, together with an exhibit of the several organized counties as provided in section 6531, which report shall by the Governor be transmitted to the Legislative Assembly.

Accounts submitted, cash counted.

(6535) § **9.** He shall as often as required submit his books, accounts, vouchers and the funds in the treasury to the inspection of either branch of the Legislative Assembly, or any committee appointed for that purpose by the Legislative Assembly or by the Governor, and the committee so appointed are hereby empowered to administer to the Treasurer an oath, and it shall be their duty to rigidly examine him and all his clerks, deputies and others under oath touching all matters connected with the business of his office; such committee shall require the funds of the Territory in the hands of the Treasurer to be produced in cash, and counted in their presence, and shall see that the money so counted is not borrowed, and to determine that fact, may compel any and all persons to appear before them on subpœna issued by them and served and testify fully, and if they have good reason to believe that any part of the money so offered to be counted is borrowed, the committee shall retain all the money so offered as the funds of the Territory, and place it in safe keeping until the matter be fully investigated, and if the Treasurer be retained in office the funds shall be returned to him, if not retained, the funds shall be paid to his successor as soon as he may be inducted into office. If there is good reason to suspect any fraud in the Treasurer, the Governor shall appoint such committee and order an investigation. Each member of said committee shall be allowed three dollars per day for the time necessarily employed.

Fees prohibited.

(6536) § **10.** He shall in no case, purchase or receive any warrant redeemable at the treasury, or any audited account at a less value than expressed thereon, nor shall he receive any fee or reward, aside from his annual salary for transacting any business connected with the duties of his office.

Treasurer to pay loss.

(6537) § **11.** If in any instance the Treasurer shall neglect to call to account any delinquents, whereby the public revenue may suffer loss, he shall be held and deemed accountable for the sums due by such delinquents to all intents and purposes, the same as if the funds had actually been paid into his office.

AKTILE 4.—ATTORNEY GENERAL. Chap. 82.

SECTION.
1. How chosen, duties
2. Further duties.
3. Legal advice to departments.
4. Preparation of contracts.
5. Public money, to whom paid.
6. Docket of costs.
7. Oath and bond.

(6538) § **1**. There shall be in and for the Territory of Oklahoma an Attorney General who shall be appointed by the Governor, by and with the consent of the Legislative council, who shall hold his office two years and until his successor is appointed and qualified. He shall be a member of the Territorial board of equalization. He shall appear for the Territory and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court in which the Territory shall be interested as a party, and shall also when requested, by the Governor or either branch of the Legislature, appear for the Territory and prosecute or defend in any other court or before any officer, in any cause or matter, civil or criminal, in which the Territory may be a party or interested, and shall attend to all civil cases remanded by the Supreme court to any district court in which the Territory is a party or interested. He shall keep an office to be furnished by the Territory in the same manner as the other Territorial offices. How chosen, duties

(6539) § **2**. It shall be the duty of the Attorney General at the request of the Governor, Auditor or Treasurer, to prosecute any official bond or any contract in which the Territory is interested upon a breach thereof, and to prosecute or defend for the Territory all actions civil or criminal, relating to any matter connected with either of their departments. Further duties

(6540) § **3**. The Attorney General shall consult with, and advise the county attorneys when requested by them, in all matters pertaining to the duties of their office. He shall also when requested give his opinion in writing without fee, upon all questions of law, submitted to him by the Legislature, or either branch thereof, or by the Governor, Auditor, Treasurer or Superintendent of Public Instruction. Legal advice to departments.

(6541) § **4**. Whenever requested by the Territorial Auditor, Treasurer or Superintendent of Public Instruction, he shall prepare proper drafts for contracts, forms and other writings, which may be wanted for the use of the Territory, and he shall report to the Legislature or either branch thereof, whenever requested upon any business relating to the duties of his office. Preparation of contracts, etc.

(6542) § **5**. All moneys received by the Attorney General belonging to the Territory, shall immediately upon receipt thereof, be paid by him into the Territorial treasury. Money to whom paid

(6543) § **6**. The Attorney General shall keep in proper books to be provided for that purpose, at the expense of the Territory, a register of all actions and demands prosecuted or defended by him in behalf of the Territory and of all proceedings had in relation thereto, and shall deliver the same to his successor in office. Docket of cases.

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Oath and bond.

(6544) § **7.** Before the Attorney General enters upon the duties of his office, he shall take and subscribe the oath required by law and shall execute to the Territory a bond, with not less than three sureties, in the sum of three thousand dollars to be approved by the Governor, conditioned for the faithful performance of his duties as Attorney General, and also a member of the Territorial board of equalization, which bond and oath shall be filed in the office of the executive, and such bond shall be renewed in larger amounts whenever required by the Legislature.

ARTICLE 5.—SALARIES AND RESIDENCE.

SECTION.
1. Superintendent, as Auditor.
2. Attorney General.
3. Treasurer.
4. Territorial Superintendent and Auditor, bond.
5. Officers to be residents of the Territory.

Superintendent as auditor.

(6545) § **1.** The Territorial Superintendent, acting as Territorial Auditor, shall receive an annual salary of six hundred dollars as compensation for services as Auditor, payable quarterly.

Attorney General.

(6546) § **2.** The Territorial Attorney General shall receive an annual salary of eight hundred dollars, payable quarterly.

Treasurer.

(6547) § **3.** The Territorial Treasurer shall receive an annual salary of one thousand dollars, payable quarterly.

Superintendent and auditor, bonds.

(6548) § **4.** The Territorial Auditor and Superintendent of Public Instruction shall each, before entering upon the duties of their respective offices, execute a bond, with good and sufficient sureties, payable to the Territory of Oklahoma, in the penal sum of five thousand dollars, to be approved by the Governor. The Territorial Treasurer shall execute a bond in like manner, in the penal sum of fifty thousand dollars, which amount may be increased at any time by the Governor.

Officers to be residents.

(6549) § **5.** All officers appointed in compliance with the provisions of this act shall be *bona fide* residents and legal voters of the Territory.

ARTICLE 6.—POWERS AND DUTIES OF GOVERNOR.

AN ACT Defining the Powers and Duties of the Governor of the Territory of Oklahoma.

[Took effect December 3, 1890.]

SECTION.
1. Governor, how appointed.
2. Territorial officers, appointed and commissioned.
3. Territorial official vacancy, how filled.
4. Removal of Territorial officers.
5. Reprieves, commutations and pardons.
6. Governor's message.
7. Extra session of the Legislature.
8. Bill passed by the Legislature to go before the Governor.
9 Office, location of.
10. Journal of official acts
11. Commander-in-Chief of Territorial militia.
12. Reward for criminals' arrest.
13. Council employed on behalf of the Territory.
14- Expenses of two above sections, how met.
15. Election proclamation, publication.
16 Executive officers' report to the Governor.
17. Additional powers and duties.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma: Chap. 82.

Governor, how appointed.

(6550) § **1**. The supreme executive power of the Territory shall be vested in the Governor appointed as provided by the laws of the United States, and he shall take care that the laws of the Territory are faithfully executed.

Territorial officers

(6551) § **2**. The Governor shall nominate, and by and with the advice and consent of the Council (expressed by a majority of all the councillors elected, voting by yeas and nays) appoint and commission all Territorial officers.

Vacancy filled.

(6552) § **3**. In case a vacancy should occur in any Territorial office, when the Legislative Assembly is not in session, the Governor shall make a temporary appointment until the next session of the Legislature, when he shall nominate some person to fill such office, and, if confirmed by the Council, the person so nominated shall hold the office during the remainder of the term and until his successor shall be appointed and qualified. Any person once rejected by the Council, shall not be renominated for the same office.

Removal of territorial officers.

(6553) § **4**. The Governor shall have power to remove any officer so appointed by him, in case of incompetency, neglect of duty, or malfeasance in office; and may then fill the same as provided in cases of vacancy.

Pardons, reprieves and commutations.

(6554) § **5**. The Governor may grant reprieves, commutations and pardons after convictions subject to such regulations as may be provided for by law, relative to the manner of applying for pardons.

Message.

(6555) § **6**. The Governor shall at the commencement of each session of the Legislature, give to that body information, by message, of the condition of the Territory, and shall recommend such measures as he shall deem expedient; and during the session may make any further recommendations that he may deem proper. He shall also present estimates of the amount of money required to be raised by taxation for the Territorial purposes during the next two years, and shall also inform the Legislature as to any deficit that may be in the funds of the Territory.

Extra session legislature.

(6556) § **7**. The Governor may, when by him deemed expedient, convene the Legislature in extra session, stating in the call therefor the purpose for which it is convened.

Approval of bills

(6557) § **8**. Every bill passed by the Legislature, before it becomes a law, shall be presented to the Governor for his approval, as provided by the Organic Act of this Territory.

Office, location of.

(6558) § **9**. The Governor shall keep his office at the seat of Government, in which shall be transacted the business of the executive department of the Territory.

Journal of official acts

(6559) § **10**. He shall keep a journal in the executive office in which shall be made an entry of every official act done by him and the time when done. If, in cases of emergency, acts are done elsewhere than in such office, an entry thereof shall be made in the journal as soon thereafter as possible.

Commander-in-chief of militia.

(6560) § **11**. The Governor shall be commander in chief of the militia of the Territory, andshall cause a military record to be

kept, in which shall be made an entry of every act done by him as commander in chief.

Reward for criminals arrest.

(6561) § **12**. Whenever the Governor is satisfied that the crime of murder or arson has been committed within the Territory, and that the person charged therewith has not been arrested, or has escaped therefrom, in his discretion he may offer a reward not exceeding five hundred dollars for the arrest and delivery to the proper authorities of the person so charged, which reward shall be audited upon a certificate of the Governor that the same has been earned, and paid by the Territory.

Counsel employed.

(6562) § **13**. Whenever the Governor is satisfied that an action or proceeding has been commenced which may effect the rights or interests of the Territory, he may employ counsel to protect such rights or interests; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the Territory he may employ additional counsel to assist in the cause.

Expense of above sections

(6563) § **14**. Expenses incurred under the two preceding sections in causing the laws to be executed, shall be allowed if found corrects by the auditing officer of the Territory, drawing a warrant on the Territorial treasury therefor.

Election proclamations, publication.

(6564) § **15**. The Governor shall in all cases issue his proclamation, giving thirty days notice of the time and places of holding elections, for the purpose of choosing a delegate to Congress, and members of the Territorial Legislature, and for choosing county and township officers, and cause the same to be published in a newspaper published in each county of the Territory, and if there be a vacancy in the office of delegate to Congress, or in the office of councillor or representative in the Legislature, the Governor shall by proclamation call a special election to fill the vacancy.

Executive officer's report

(6565) § **16**. The Governor may, from time to time, require information in writing from the executive officers of the Territory on any subject relating to the duties of their respective offices, and and it shall be their duty when so required, to furnish the same.

Additional powers and duties.

(6566) § **17**. In addition to the powers herein conferred, and duties imposed, the Governor shall exercise such powers in relation to special subjects as provided by law.

CHAPTER LXXXIII.—TOWNSHIPS AND TOWNSHIP OFFICERS.

AN ACT Providing for the Organization of Municipal Townships and Designating the Officers and Defining the Duties of the same.

[Took effect December 25, 1890]

ARTICLE
1 Organization and officers' duties

ARTICLE.
2. Assessor.

ARTICLE 1.—ORGANIZATION AND OFFICERS' DUTIES.

SECTION.
1. Municipal townships organized.
2. Townships bodies corporate.
3 Election of officers.
4 Offices, who eligible
5. Vote for road overseer.
6. Commissioners canvass vote.
7 The vote decided.
8 Vacancy, how filled.
9. Appointee to hold.
10. Official oath, office vacant.
11 Treasurer's bond.
12. Constable's bond.
13. Justice's bond.
14. Road officer, bond, vacancy.
15. Trustee's duties.
16. Auditing board, who
17. Same, duties.
18. Same, annual settlement.
19 Trustees' annual report.
20 Same, custody of township property.
21 Same prosecution of suits for township.
22. Same, removal of obstruction from highway.

SECTION.
23. Treasurer's duties
24. Same, separate account for each fund.
25. Same, accounts verified.
26 Township clerk's bond.
27. Clerk's duties.
28. Same, records kept open.
29. Same, report to county clerk.
30. Road overseer.
31. Same, duties.
32. Justice of the peace.
33. Additional justices.
34. Constables, powers and duties.
35. Same.
36. Same.
37. Same.
38. Same, incarcerate prisoner.
39. Same, attend trial, when.
40. Same, to call aid.
41. Failure to give bond.
42. Refusal to deliver records.
43. Corporate limits of township.
44. Boundaries altered

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

(6567) § **1**. It shall be the duty of the board of county commissioners of the several counties of the Territory of Oklahoma at their next regular session, after the approval of this act, to organize their respective counties into municipal townships. They shall cause a plat and record thereof to be made by the county clerk, specifying the name and boundaries of such townships, which plat and record shall be kept in the office of such clerk and a copy thereof under the seal of said board shall be made by the said clerk and caused to be filed with the proper officer of such township. Municipal townships organized

(6568) § **2**. Each organized township as provided in the preceding section shall be a body politic and corporate, and in its proper manner may sue and be sued, and may appoint by its proper officers all necessary agents and attorney in that behalf, and may make all contracts that may be necessary and convenient for the exercise of its corporate powers. Townships bodies corporate.

(6569) § **3**. At the first election for the election of county of- Election of officers.

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ficers after the approval of this act, and at every biennial [election] thereafter, there shall be elected in each municipal township one trustee, one clerk, one treasurer, two constables, two justices of the peace, and one road overseer in each road district in the township, who shall hold their offices for the term of two years: *Provided, however,* That the board of county commissioners at the time of the organization of the townships in their respective counties shall appoint all township officers (except justices of the peace and constables) who shall hold their offices until their successors are elected and qualified: *Provided, further,* That after the adjournment of the first Legislative Assembly the said boards of county commissioners shall appoint a justice of the peace and a constable in each of the municipal townships in their respective counties, who shall hold their offices until their successors are elected and qualified.

Office, who eligible

(6570) § **4.** No person shall be eligible or qualified to hold any township office who is not a legal voter in such township, and no county attorney or clerk of the the district court shall be eligible to or hold the office of justice of the peace, and all township officers shall reside and hold their offices in the township for which they shall have been elected or appointed, and no justice of the peace shall hold his office in or over any saloon, or office with any attorney

Vote for road overseer.

(6571) § **5.** It shall not be lawful for any elector to vote for more than one road overseer, and any ballot containing more than one name for the office of said road overseer shall be rejected so far as that office is concerned, nor shall any elector vote for a road overseer except for the district in which he may reside, and the number of the road district shall be given upon the ballot in connection with the name of the person voted for.

Commissioners canvass vote.

(6572) § **6.** The board of county commissioners shall constitute a board of canvassers, and they shall at the time and place the vote for county officers is canvassed, canvass the vote for the respective township officers and determine who have been elected to the several offices in each township in their respective counties, which determination they shall reduce to writing and cause a certified copy thereof to be filed in the office of the county clerk, and it shall be the duty of said county clerks to issue certificates of election to the persons so determined to be elected, and deliver or forward the same to the persons entitled thereto.

Tie vote decided.

(6573) § **7.** In all cases of a tie vote between the officers to be elected under this act, the county board shall at the time the canvass is made determine by lot which shall be elected.

Vacancy, how filled.

(6574) § **8.** In case of a vacancy in any township office from any cause, the board of county commissioners of the county where such vacancy occurs shall appoint a suitable person having the necessay qualifications and residing in the township where such vacancy exists, to fill such office until the next election when county and township officers are elected.

Appointee to hold.

(6575) § **9.** All township officers appointed to fill vacancies shall hold their office until the next general election of county and township officers, and until their successors are elected and quali-

fied, and they shall take a like oath, and give a like undertaking as is required to be given by officers elected.

Official oath; office vacant.

(6576) § **10**. Every person elected to the office of trustee, clerk, treasurer, justice of the peace, or constable of any township, or road overseer of any road district, shall within twenty days after he shall be notified of his election, take and subscribe the oath of office prescribed by law and shall forthwith cause such oath to be filed in the office of the county clerk of his county, and in case any of such officers shall become non-resident of their respective townships or road districts, their office shall at once become vacant.

Treasurer's bond.

(6577) § **11**. Each township treasurer shall, before entering upon the duties of his office, execute a bond to the county in a sum not less than double the amount of money which will probably come into his hands at any time during his term of office, with two or more sureties, the amount and sufficiency of the bond to be approved by the board of county commissioners conditioned for the faithful discharge of his duties, which bond shall be by him forthwith caused to be filed in the office of the county clerk.

Constable's bond.

(6578) § **12**. Every constable within twenty days after his election and before he shall take the oath of office, shall give a bond to the county in a sum not exceeding one thousand dollars, with two or more sureties, the amount and sufficiency of the bond to be approved by the board of county commissioners, conditioned for the safe keeping and paying over to the proper person or authority all moneys which may be collected or received by him, or which may otherwise come into his hands by virtue of his office, and for the honest and faithful discharge and performance of all (and singular) his duties as such constable according to law, during his continuance in office, which bond shall be filed in the office of the county clerk.

Justice's bond.

(6579) § **13**. Every justice of the peace, before he enters upon the duties of his office, and within the time limited by law for filing his oath of office. shall execute an instrument in writing, with two or more sufficient securities, to be approved by the board of county commissioners, which writing shall be in substance as follows,

"I, ..., chosen justice of the peace, in the township of....., and county of....., Territory of Oklahoma, and A..... B..... and C..... D....., his sureties, do hereby jointly [and] severally agree to pay on demand to each and every person who may be entitled thereto, all such sums of money as the said justice may become liable to pay, on account of any moneys which may come into his hands, by virtue of his office.

Dated at....., this.....day of.....A. D., ..., signed, A..... B..... C..... D.....

The approval of the board shall be endorsed on said instrument, and the said justiee shall cause the same to be filed in the office of the county clerk.

(6580) § **14**. Each road officer shall before entering upon the

Road officer, bond, vacancy.

duties of his office, execute a bond to the county in a sum not less than double the amount of money which will probably come into his hands at any time during his term of office, with two or more sureties, the amount and sufficiency of the bond to be approved by the township trustee, conditioned for the faithful discharge of the duties of his office, which bond shall be by him forthwith caused to be filed in the office of the county clerk. The approval of such bond shall be endorsed thereon by the township trustee. The township trustee shall also have power to fill by appointment any vacancy in the office of road overseer in any of the road districts in his township, and such appointed officers shall before entering upon their duties, qualify in the same manner as officers elected.

Trustee's duties.

(6581) § **15**. The duties of the township trustees shall be:

First. To divide his township into convenient road districts, and make such alteration in the same as may be necessary.

Second. To fill all vacancies in the office of road overseer in his township.

Third. To see to a proper application of all moneys belonging to his township for road or other purposes.

Fourth. To have the care and management of all property, real and personal belonging to his township, and to superintend the various interests thereof.

Fifth. To cause a record to be accurately made defining the boundaries and number of each road district, as well as all alterations made in such district or districts in his township, and the number of road overseers in each township.

Sixth. Shall have power to administer all oaths in the necessary discharge of the duties of his office.

Seventh. Shall superintend the pecuniary concerns of his township and shall, with the advice and consent of the township clerk and treasurer, on or before the first day of June of each year certify to the county commissioners the number of mills to be levied on the property in his township for township road and bridge purposes, in addition to the amount levied by the county, and it shall then be the duty of the county commissioners to levy the same, and such tax shall be entered in the proper tax roll in a separate column and collected, as other taxes and when collected paid over to the township and be expended upon the township roads and bridges.

Eighth. He shall discharge such other duties as may be imposed by law.

Auditing board, who.

(6582) § **16**. The township trustee, clerk and treasurer of each municipal township shall meet on the last Saturday of December, March, June and September of each year as an auditing board, and no bills against any township shall be paid until allowed by a majority of said auditing board, and all bills allowed by said board shall be recorded by the clerk in a book to be kept by him for that purpose. The township officers mentioned in this seetion shall receive for their services as such auditing board, the sum of two dollars per day for the time actually and necessarily spent by them: *Provided,* That this section shall not be construed to in-

clude the services of the trustee for assessing his township, who shall receive therefor the compensation allowed by law.

Same, duties.

(6583) § **17**. The township auditing board shall examine and audit all accounts and demands against the township, and the trustee shall draw orders on the township treasurer for all accounts and demands allowed by such auditing board, but no allowance shall be made on any account which does not state specifically each item of the same and which is not verified by the affidavit, and no allowance shall be made for any amount in excess of that authorized by law for any purpose. No order shall be of any validity until countersigned by the township clerk.

Same, annual settlements

(6584) § **18**. The township auditing board shall annually on the last Saturday of December in each year, settle with an audit the accounts of the township treasurer, and of all road overseers in the township for all moneys disbursed by them, and the township clerk shall record at length such accounts on the township record.

Trustee's annual report.

(6585) § **19**. The trustee shall at the regular meeting of the board of county commissioners, next succeeding his annual settlement with the township treasurer and road overseers. as provided in the next preceding section, make a complete record of the affairs of his township for the preceding year, stating in detail the items of account audited and allowed, the nature of each account and the name of each person to whom such account was allowed, and such report shall be verified by affidavit, which reports and accounts shall thereupon be examined by said board, and if found correct and in conformity to law, shall be by said board approved and filed in the office of the county clerk of such county, but if such reports and accounts are not found correct, or not in conformity to law, said board shall cite such trustee to appear before it and correct any errors appearing therein, and such trustee and his bondsmen shall be liable to his township for the amount of any and all accounts or demands by him allowed or paid in excess of that authorized by law for any purpose, and it shall be the duty of the county attorney of such county to prosecute any and all suits in the name of such township for the recovery of the same, in any court of competent jurisdiction, and the trustee shall within ten days after the approval thereof by said board, furnish a copy of such report with the approval of said board thereon, to the township clerk for record.

Same, custody of township's property,

(6586) § **20**. In addition to the duties now prescribed by law, the township trustee shall have the custody and disposition of the property of his township, and shall on going out of office take from his successor in office a receipt for such property as he shall transfer to him, and shall file such receipt with the county clerk of his county, and such receipt when so filed, shall be *prima facie* evidence of the facts therein stated

Same, prosecution of suits for townships.

(6587) § **21**. The township trustee shall prosecute, in the name of his township, all violations of the road law, or any provisions thereof, and in such prosecution it shall be the duty of the county attorney to act on behalf of the township.

Same. removal of obstructions from highway.

(6588) § **22**. The township trustee shall remove obstructions from the highways in cases where the road over-seer shall refuse

or fail to do so, and the trustee shall in such cases have all the power of road overseer in calling out the inhabitants to perform the work necessary to remove such obstructions.

Treasurer's duties,

(6589) § **23**. The township treasurer shall receive and take charge of all moneys belonging to his township or which are by law required to be paid to him and shall pay out and account for the same upon orders drawn upon him by the township trustee, and shall discharge such other duties as may be required of him by law.

Same, separate account for each fund,

(6590) § **24**. The township treasurer shall keep a true account of all moneys by him received by virtue of his office; and the manner in which the same have been disbursed, keeping a separate account with each fund in a book to be provided at the expense of the township for that purpose, and shall exhibit such account, together with his vouchers to the township auditing board at their annual meeting on the last Saturday of December in each year for adjustment and settlement.

Same, accounts verified

(6591) § **25**. The account as provided for in the last preceding section shall be made out in duplicate and shall be verified by affidavit, that the same is in all respects true and correct, and that it contains a full and true amount of all moneys received by him during the full period of time for which he should make such statement, and one of such verified duplicates shall be filed forthwith by the treasurer in the office of the county clerk.

Township clerk's bond.

(6592) § **26**. Each township clerk shall before entering upon the duties of his office, execute a bond to the county in a sum not less than two hundred dollars, with two or more sureties, the amount and sufficiency of the bond to be approved by the board of county commissioners, conditioned for the faithful discharge of his duties, which bond shall be by him forthwith filed in the office of the county clerk.

Clerk's duties.

(6593) § **27**. The township clerk shall have the custody of the records, books and papers of the township when no other provision is made by law, and he shall file in his office all such papers as are by law required to be filed, and promptly record such as are by law required to be recorded therein, and he shall discharge such other duties as may be required by law.

Same, records kept open.

(6594) § **28**. He shall immediately after receiving the report of the township trustee, record the same at length in the township record and publish the same by posting up certified copies thereof at the usual place of holding elections in the township. The records and other books of the township clerk and treasurer shall always be open for public inspection.

Same, report county clerk.

(6595) § **29**. That in addition to the duties now required by law of the township clerks, they shall each of them make and transmit to the clerk of their respective counties on or before the regular meeting of the board of county commissioners next succeeding the annual settlement of the township treasurer and road overseer a complete certified statement of the floating and bonded indebtedness with date of issuing and of maturing of outstanding bonds, amount of sinking fund, if any, for redeeming the same, and such other in-

formation as may be required by the county clerk concerning the financial condition of their respective townships; and when no outstanding indebtedness exists, such fact shall be reported.

Road overseer

(6596) § **30**. The duties of road overseer shall be such as are and may be prescribed by law.

Same, duties.

(6597) § **31**. Each road overseer shall keep an accurate account of all moneys received by him by virtue of his office, and the manner in which the same has been disbursed, and to whom, and shall on the last Saturday in December in each year exhibit such accounts, together with his vouchers to the township auditing board, for adjustment and settlement. Such accounts shall be in writing, verified by the affidavit of the overseer that the same is in all respects a full and true account of all moneys received by him during the full time which he should make settlement and of the amounts expended and the manner in which they were expended.

Justice of the peace

(6598) § **32**. The jurisdiction, powers and duties of justices of the peace shall be such as are prescribed by law.

Additional justices.

(6599) § **33**. Whenever a majority of all the voters in any township in this Territory shall petition the county commissioners of their respective counties that there is not a sufficient number of justices of the peace or constables in such township, the county commissioners shall make an order for the additional number of justices as they may deem expedient, and said justice or justices, constable or constables shall be elected at the next regular election held in such township.

Constables, powers, etc

(6600) § **34**. All constables shall be ministerial officers in justices' courts in their respective counties, and civil and criminal process may be executed by them throughout the county under the restrictions and provisions of law. They may appoint one or more deputies, who may perform the same duties as their principals, and such principals shall be responsible upon their official bonds for the acts of such deputies.

Same, duties

(6601) § **35**. In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend throughout the county in which he may be elected or appointed, and in executing and serving process issued by a justice of the peace he shall have and exercise the same authority and powers over goods and chattels and the person of parties, as is granted by law to the sheriff or coroner under like process issued from the courts of record.

Same.

(6602) § **36**. It shall be the duty of every constable to serve all warrants, writs, precepts, executions and other process to him directed and delivered, and in all respects whatever, to do and perform all things pertaining to the office of constable.

Same

(6603) § **37**. It shall be the duty of every constable to apprehend, on view or on warrant, and bring to justice all disturbers and violators of the criminal laws of this Territary; to suppress all riots, affrays and unlawful assemblies which may come to his knowledge, and generally keep the peace in his county.

Same, incarcerate prisoner,

(6604) § **38**. When it shall become the duty of the constable

to take the body of any person to the jail of the county, he shall deliver to the sheriff or jailer a certified copy of the commitment or other process whereby he holds such person in custody, and return the original to the justice who issued the same, which copy shall be sufficient authority to the sheriff or jailer to keep the prisoner in jail until discharged by due course of law.

Same, attend trial, when.

(6605) § **39**. Whenever any constable shall serve a warrant in a criminal case, or summons in a civil case, it shall be his duty to attend upon the trial of such case, if held within his own township either personally or by a deputy, and execute all orders and process made or issued by the justice therein.

Same, to call aid

(6606) § **40**. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary.

Failure to give bond

(6607) § **41**. If any person elected to any township office of whom an oath or bond is required, shall enter upon the duties of such office before he shall have filed such oath or bond, he shall be fined in a sum not exceeding one hundred dollars.

Refusal to deliver records, etc

(6608) § **42**. Every township officer who shall after the expiration of his term of office, neglect or refuse to deliver, on demand, to his successor in office, after his successor shall have been duly qualified according to law all moneys, records, books, papers, or other property appertaining to such office, shall be liable to a fine of not less than fifty nor more than five hundred dollars.

Corporate limits of township

(6609) § **43**. No city of more than one thousand and five hundred inhabitants shall be included within the corporate limits of any township, but each of such cities shall constitute a township for the purpose of electing justices of the peace and constables as provided in this act, and for the exercise of the process and jurisdiction of such officers as prescribed by law. In such cities said officers shall be elected at the regular city election.

Boundaries altered.

(6610) § **44**. No change or alteration of the boundaries of a township or city shall vacate the office of any justice elected and residing therein, but such justice shall be deemed a justice of the township or city into which he may be thrown by such change or alteration, and shall hold his office for the term for which he was elected. Constables shall also be subject to the provisions of this section.

ARTICLE 2.—ASSESSORS. Chap. 83.

AN ACT Relating to Assessors.

[Took effect December 25, 1890.]

SECTION.		SECTION.	
1.	Township assessor.	5.	Town assessor, vacancy.
2.	Township defined.	6.	Assessor to qualify.
3.	Assessor's bond	7.	Salary.
4.	Township trustee, vacancy.	8.	Property valuation.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma.

Township assessor, bond.

(6611) § **1**. The township trustee of each municipal township in this Territory shall be by virtue of his office the assessor of his township, and shall give an additional bond to the one already required by law, for the faithful performance of his duties as such assessor.

Township defined

(6612) § **2**. That all towns, villages or cities, having a population of one thousand inhabitants and over, are hereby declared townships for the purposes of this act, and shall annually, at the the general town, village or city election, elect an assessor whose duties and powers shall be the same as prescribed by law for township assessors.

Assessor's bond.

(6613) § **3**. All township and town, village or city assessors shall each give a bond in the sum of five hundred dollars for the faithful performance of their duties, which bond shall be payable to the Territory of Oklahoma, and said bond shall be approved by the county commissioners and filed with the county clerks of their respective counties.

Township trustee, vacancy,

(6614) § **4**. The board of county commissioners for their respective counties shall have power to fill by appointment any vacancy in the office of township trustee, and the chairman of the board shall have power to call a special meeting of the board for the purpose of filling such vacancy.

Town assessor, vacancy.

(6615) § **5**. The mayor and common council, or board of village trustees, of any city, town or village, for their respective city, town or village, shall have power to fill by appointment any vacancy in the office of city, town or village assessor, and the mayor or presiding officer of the board of town or village trustees shall have power to call a special meeting of the city council or board of town or village trustees for the purpose of filling such vacancy.

Assessors to qualify.

(6616) § **6**. All assessors appointed as provided in the last two preceding sections, before entering upon their duties as such assessors, shall qualify in the same manner as provided by law for officers elected to such offices.

Salary.

(6617) § **7**. Such township trustee as the township assessor and the city, town or village assessor, shall receive such sum not exceeding three dollars per day for each day of actual service in the discharge of his duties as the board of county commissioners may deem just and right for the time actually engaged in his duties. *Provided*, That the assessors of each township or muni-

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Property valuation.

(6618) § **8.** The several township and city assessors shall meet at the county seat of their respective counties on the second Monday of January in each year and agree upon an equal cash basis of valuation of such property as they may be called upon to to assess. It shall be the duty of the county clerk of each county to notify said township and city assessors at least ten days previous to the date of such meeting.

CHAHTER LXXXIV.—TRUSTS.

AN ACT to Prevent Combinations in Restraint of Trade.

[Took effect December 25, 1890.]

SECTION.
1. Penalty for combining to restrict competition.
2. Companies not to violate by their officers.
3 When person not liable for debt, plaintiff may be compelled to testify.
4. Money paid may be recovered.
5. County attorney to prosecute.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Penalty for combining to restrict competition.

(6619) § **1.** If any individual, firm, partnership or any association of persons whatsoever, shall create, enter into, become a member of, or a party to, any pool, trust, agreement, combination or understanding with any other individual, firm, partnership or association of persons whatsoever, to regulate or fix the price of, or prevent or restrict, the competition in the sale of provisions, feed, fuel, lumber, or other building materials, articles of merchandise or other commodity [they], shall be deemed guilty of [a] misdemeanor and upon conviction thereof, shall be fined not less than fifty, nor more than five hundred dollars.

Companies not to violate by their officers.

(6620) § **2.** It shall not be lawful for any corporation organized under the laws of this Territory, or organized under the laws of any other territory or state, and doing business in this Territory, to enter into any combination, contract, trust, pool or agreement with any other corporation or corporations, or with any individual firm, partnership or association of persons, whatsoever, for the purpose of regulating or fixing the price of, or preventing or restricting competition, in the sale of provisions, feed, fuel, lumber, or other building materials, articles of merchandise, or other commodity, including the fixing of the rate of interest. [Any] president, manager, director, agent, receiver or other officer of any such corporation, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, for the first offense, and upon a second conviction shall be fined a sum equal to twice the amount of the first fine, and such corporation shall forfeit its corporate right and franchise, and its

corporate existence, in this Territory, shall thereupon cease and determine.

When person not liable for debt, plaintiff may be compelled to testify.

(6621) § **3**. Any person purchasing provisions, feed, material, articles of merchandise, or any commodity from any individual, firm partnership or corporation, transacting business in violation of the provisions of this act, such person so purchasing shall not be liable for the price or payment of any such article or commodity and may plead this act, as a defense in any suit for price or payment. In any civil action brought under, the provisions of this section the court before whom such suit shall be pending may compel the plaintiff to testify, but if the plaintiff be a corporation then the court may compel any officer, agent, or employee of such corporation to attend, appear, and testify, or compel the production of any contract, or papers in evidence in such civil action: *Provided*, the evidence so obtained shall not be used in any criminal prosecution against the person so testifying except in a criminal prosecution for perjury committed in giving such testimony.

Money paid may be recovered.

(6622) § **4**. Any person who shall have purchased from any individual, firm, partnership or corporation, doing business in violation of the provisions of this act, any provisions, feed, fuel, lumber or other building material, articles of merchandise, or other commodity, and paid for the same, may maintain a civil action to recover the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable attorneys fee to be fixed by the court, which attorneys fee shall be taxed and collected as part of the costs in such case. In any civil action brought under the provisions of this section the court before whom such suit be pending may compel the defendant to testify, but if the defendant be a corporation, then the court may compel any officer, agent or employe of such corporation to attend, appear and testify or compel the production of any contract or paper as evidence in such civil action: *Provided*, The evidence so obtained shall not be used in any criminal action against the person so testifying except in a criminal prosecution for perjury committed in giving such testimony.

County attorney's to prosecute.

(6623) § **5**. It shall be the duty of the prosecuting attorneys in their respective counties, to enforce the foregoing provisions of this act, and any prosecuting attorney securing a conviction under the provisions of this act, shall be entitled in addition to such fee or salary as by law he is allowed for such prosecution, to one fifth of the fine received.

CHAPTER LXXXV.—TOWNSITES ON PUBLIC DOMAIN.

AN ACT Relating to Townsites Located upon the Public Domain in the Territory of Oklahoma.

[Took effect December 25, 1890.]

SECTION.

1. Townsite, who may make entry.
2. Entry fee, money for, how raised.
3. Disposition of town property.
4. Persons making entry to transfer to claimants.
5. Expenses of entry and claims.
6. Publication of notice of entry.
7. Same.
8. Statement of claimants to be recorded
9. Conflicting claims, how treated.
10. Extent of ground that may be claimed.
11. Expenses, certain to be paid by claimant.
12. Deeds to be given.
13. Unclaimed lands to be conveyed to the board of education.
14. Who shall act in absence of probate judge.
15. Unclaimed lands shall be appraised.
16. Public sale of unclaimed lands.
17. Bids, private sale.
18. Purchaser shall pay for deed.
19. Proceeds of sale, how applied.
20. Disposition of surplus.
21. Expiration of term of office of person making entry of townsite.
22. Appeals from townsite boards may be taken, where.
23. Sections and numbers may be changed by publisher.

Townsite, who may make entry.

(6624) § **1.** Whenever any portion of the public lands of the United States have been or shall be settled upon and occupied as a townsite, and therefore not subject to private entry under the agricultural pre-emption laws, it shall be lawful and the duty, whenever requested by a majority of the occupants or owners of the lots within the limits of the town, for the corporate authorities of the town if incorporated, and if not incorporated then for the judge of the probate court of the county in which such town may be situated, to enter at the proper land office the land so settled upon and occupied, and hold the same in trust for the several use and benefit of the occupants thereof and those holding by deed or otherwise, according to their respective interests.

Entry fee, money for, how raised.

(6625) § **2.** If at any time the petition is presented as provided for in the preceding section there is not in the treasury of the town moneys sufficient to pay for the land settled upon and occupied, the corporate authorities or the probate judge, as the case may be, may raise by subscription or otherwise sufficient funds to pay for said land and costs of entering the same, and any and all sums so advanced for such purpose shall be repaid in the manner provided for in section 6628.

Disposition of town property.

(6626) § **3.** When the corporate authorities of any city or town, or the judge of the probate court of any county in this Territory in which any city or town may be located, shall have entered at the proper land office or any part thereof so settled and occupied as he site of such city or town, pursuant to and by virtue of the act of Congress of the United States, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and acts amendatory thereto, it shall be the duty of such corporate authorities or judge of the probate court, his or their successors, to dispose of the

trust so created and conferred by said act of Congress in the manner hereinafter specified.

Person making the entry to transfer to claimants.

(6627) § **4.** Any such corporate authorities or judge of the probate court holding the title to any such lands in trust as declared in said act of Congress shall, subject to the provisions of this act, by a good and sufficient deed of conveyance grant and convey the title to each and every block, lot, share or parcel of the same to the person, persons, associations or corporations who shall occupy or possess or be entitled to the right of possession or occupancy thereof, according to the several rights and interests of the respective claimants in or to the same as they existed in law or equity at the time of the entry of such lands, or to the heirs or assigns of such claimants. Every such deed of conveyance made by such corporate authorities or judge of the probate court pursuant to the provisions of this act shall be so executed and acknowledged as to admit the same to be recorded.

Expense of entry and claims.

(6628) § **5.** Immediately upon making the entry, and during the sixty days thereafter, such corporate authorities or probate judge shall proceed to itemize and pass upon the expenses of procuring said entry to be made, including the moneys paid at the land office for such entry, the costs of surveying and platting the town site, of attorney's fees, witness fees, recording plat and all other expenses necessary and incident to procuring the entry and perfecting the title, and for this purpose shall give notice to all persons having any claims for moneys advanced or services rendered to present and file a certified statement of the same within said sixty days, such notice to be given promptly after making of the entry, and to be by publication for three weeks in some newspaper published in the county wherein the town site is located, or if none be so published then in the newspaper published nearest thereto. And any person having or making any such claim who shall at the expiration of said sixty days have failed to file such verified statement of account shall be thereafter barred from presenting the same or recovering thereon. Upon the receipt of such verified statements of accounts they shall be duly filed by the said corporate authorities or judge of the probate court, and either allowed, rejected or allowed in part as in the judgment of such corporate authorities or judge of the probate court may be just and right, due notice of such allowance, rejection or allowance in part to be at once given to to the person having filed the verified statement. Any person filing such verified statement or any lot owner feeling aggrieved at the decision of such corporate authorities or judge of the probate court making such allowance, rejection or allowance in part of any claim so filed, may within thirty days after the decision appeal therefrom to the district court of the district wherein such city or town may be located, such appeal to be taken upon notice to such corporate authorities or judge of the probate court in the same manner and subject to the same restrictions as appeals from the board of county commissioners.

Publication of notice of entry and claims awarded.

(6629) § **6.** Immediately upon the expiration of sixty days after the first publication of said notice, as hereinbefore provided,

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at the proper land office, the corporate authorities or judge of the probate court entering the same, his or their successors, shall give public notice thereof by publishing such notice in a newspaper published in the county in which such city or town shall be situated, or in case there shall be no newspaper published in such county then in the newspaper published nearest the said city or town, and in the latter case where there is no newspaper published in said county, copies of said notice shall also be posted in not less than ten conspicious places within the limits of said county; such notice shall be published not less than once a week for six consecutive weeks and shall contain an accurate description of the lands entered as the same is stated in the certificate of entry, and shall also contain a statement of the several amounts awarded and allowed for the expenses of procuring the entry and which will be assessed against the land constituting the townsite in executing the deeds therefor.

Same.

(6630) § **7**. Such notice provided for in section 6628 shall direct that each and every person, association or corporation claiming to be an occupant or to have, possess or be entitled to the right of possession or occupancy of such lands or any lot, share or parcel thereof, shall within ninety days from the date of the first publication or posting of such notice, in person or by his, her or their or its duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular lot, lots, parcel or parcels of land in which he, she, they or it claim to have an interest; and the specified right, interest or estate so claimed therein, the character and value of the improvements thereon, and how occupied or possessed by such claimant, and for how long a time, and any other matter or thing illustrating or supporting such claimant's right to a deed of the tract so described, such statement to be verified by the affidavit of the party or parties signing the same.

Statement of claimants to be recorded

(6631) § **8**. The statement of the claimant provided for in the preceding section shall, together with the accompanying affidavits, be delivered to the said corporate authorities or judge of the probate court within the time specified in said notice, and shall be by him or them filed and an abstract of the contents thereof, with name of claimant and date of filing, entered in a well bound book to be kept for such purpose, which shall be known as "the record of claimants' statements." And all persons failing to furnish such statement as herein required within the time specified in said notice, except minors and insane persons, shall be forever barred of the right of claiming or recovering such lands or any interest or estate therein or any part or parcel thereof.

Conflicting claims, how treated

(6632) § **9**. Should any one or more persons, associations or corporations claim adversely the title to any lot or lots, parcel or parcels of land within the boundaries of such city or town, the party in possession, or if neither party be in actual possession, then the party first filing his application, shall be *prima facie* entitled to a deed of conveyance, and the party or parties claiming adversely shall within said ninety days after the first publication of the notice provided for in section 6628, file with the cor-

porate authorities or judge of the probate court a sworn statement as provided in section 6630, and at the same time a notice that he, she or it contests the statement and application for deed hitherto made and expects at once to begin on action in the district court to determine his, her or its right to the property; whereupon the corporate authorities or judge of the probate court must suspend action on such disputed lot or parcel of ground until a proper certificate be furnished that the dispute has been decided or abandoned. Such party or parties claiming adversely, and having filed such notice of contest, must within ten days thereafter begin action in the district court for the purpose of determining the rights of all parties, in which action all persons claiming adversely to the plaintiff or plaintiffs may be joined as parties defendant, and if not so joined shall have the right to intervene. For the purposes of this section an. action shall be deemed begun when a complaint has been filed in the office of the clerk of the court and a summons placed in the hands of a sheriff for service: *Provided*, That personal service must be made or service by publication begun within sixty days thereafter. Upon the presentation of the clerk's certificate that no complaint has been filed and no action begun in accordance with the provisions of this section, the party aforesaid having the *prima facie* right shall be entitled to a deed of conveyance, and in case of action begun the party recovering therein shall be entitled to a deed of conveyance upon presentation of a certified copy of the final judgment or decree of the court in such action to the corporate authorities or judge of the probate court. Upon receiving the certificate aforesaid or certified copy of judgment or decree the same shall be filed and an abstract of the contents entered in the record of claimant's statements, and the said corporate authorities or judge of the probate court shall thereupon execute deeds of conveyance to the party or parties entitled to receive the same. All persons except minors and insane persons failing to file their notice of contest and to bring their action within the time herein prescribed shall be thereafter forever barred from setting up or asserting any claim, right or title to such lot or lots, parcel or parcels of lands so adversely claimed.

Extent of ground that may be claimed.

(6633) § **10**. The amount of ground which any one claimant shall be entitled to receive a deed for in a single tract under the provisions of this act, unless said claimant or his grantors were in the actual peaceable possession of the same prior to its entry as herein provided for and had improved the same and is still in the occupancy thereof, may equal but not exceed two acres in extent: *Provided*, That such ground be exclusively occupied by or in the possession of such claimant and have improvements thereon of not less than two hundred dollars in value. Such claimant shall also be entitled to a deed for each additional lot not exceeding in area twenty-five hundred square feet on which he may have substantial improvements of not less than one hundred dollars in value. When any claimant shall make application for a deed to more than one tract or parcel he shall file in addition to his own affidavit as required by this act the affidavits of at least two dis-

interested witnesses showing the nature, character and actual case value of the improvements upon such additional lot or lots so claimed.

Expenses, certain to be paid by the claimant.

(6634) § **11**. Each person shall upon filing an applicant's statement as herein provided be required to pay to the said corporate authorities or judge of the probate court his proper and due proportion of the money lawfully expended in perfecting the title and procuring the entry of said land, including all streets, alleys, public grounds and parks, and all expenses necessarily incurred in making the survey and plat, for recording plat and publishing notices as required by this act, such proportion to be determined by the relation which the value, extent and area of such claimant's land bears to the whole amount of land claimed during the ninety days, and in addition thereto the sum of two dollars for the principal tract claimed and fifty cents for each additional lot of two thousand five hundred square feet claimed by the same person or persons, association or corporation, as a fee for executing the trust, taking affidavits, filing and abstracting statements and affidavits, and executing and acknowledging the deed as required by this act, which charges shall be in full payment for all expenses attending the execution of the trust. In case of appeals provided for in section 6628, the sum of one dollar shall be paid for certified copy of statement of account filed and certificate of decision and award made; and pending such appeal and the review by the district court of any award or allowance of claims for expenses in procuring the entry of land, as provided for in section 6628, the corporate authorities or judge of the probate court must in making and apportioning expenses take care that their estimate be sufficient to meet the same and any possible increase made by the appellate tribunal, any surplus resulting from such estimate to be applied as herein provided. In case of any contest, and deposit of money as in this section provided by both parties, the corporate authorities or judge of the probate court shall after final judgment and decree refund to the unsuccessful party or parties all money so advanced by such party or parties, except the sum of one dollar, which shall be retained as fees for taking and filing affidavits, statements, notice of contest, certified copy of decree, etc.

Deeds to be given

(6635) § **12**. After the expiration of ninety days from the date of the first publication of the notice required by section 6628, the corporate authorities or judge of the probate court shall proceed to award the lot or lots, parcel or parcels of land as provided in this act, and for that purpose shall as soon as practicable and as near as practicable in the order of the time of the filing of claimant's statements examine each and every claim, read proofs filed and hear additional testimony if deemed advisable, and if the claim should be found to comply with the provisions of this act, and no adverse claim and notice of contest shall have been filed, the said corporate authorities or judge of the probate court shall proceed forthwith to make such claimant or claimants a good and sufficient deed of conveyance for such lot or lots or parcels of land so claimed.

Unclaimed lands to be conveyed to board of education.

(6636) § **13.** When any lots or parcels of land within the limits of any city or town shall remain unclaimed after the expiration of the time allowed by this act for the filing of claimants' statements, it shall be the duty of the corporate authorities of judge of the probate court to convey the lots or parcels of land so remaining unclaimed by good and sufficient deed to the board of education of such city or town, if there be such body qualified to take the title to real property, to be taken and disposed of by such board of education for school purposes and for the exclusive use and benefit of the school district in which such city or town may be situated, under such directions and limitations as are provided by this act.

Who shall act in absence of probate judge

(6637) § **14.** If there be no such board of education legally authorized to take the title to real property, then the corporate authorities or judge of the probate court shall sell and dispose of the said unclaimed lots or parcels of land so remaining for school purposes, and for the exclusive use and benefit of the school district in which said city or town may be situated, under the directions, limitations and provisions contained in this act.

Unclaimed lands shall be appraised.

(6638) § **15.** The board of education, corporate authorities or judge of the probate court aforesaid shall appoint three competent and suitable freeholders of such city or town a board of appraisers whose duty it shall be to make a careful inspection and examination of all the unclaimed lots or parcels of land aforesaid, and upon each of such lots or parcels of land they shall affix a reasonable and just valuation, and upon the completion of their appraisement they shall make and return a full and complete report of their proceedings and appraisement to the board of education, corporate authorities or judge of the probate court, which said report shall contain a full schedule of each and every lot or parcel of land remaining unclaimed, giving an exact description of said lots by their numbers and the number of the block, and all parcels of land not so numbered shall be described by metes and boundaries, and upon each lot or parcel of land separately they shall designate the valuation thereof as fixed by their appraisement; said appraisement and report shall be subscribed and sworn to by at least two of said appraisers.

Public sale of unclaimed lands.

(6639) § **16.** The board of education, corporate authorities or judge of the probate court shall within thirty days after the receipt of the aforesaid report of said board of appraisers give public notice that all such unclaimed lots or parcels of lands, or so much thereof as may be considered for the best interest of the school district will be sold at public auction to the highest bidder for cash; said notice to be given by publication in not less than three newspapers of general circulation in the Territory and for a period of not less than thirty days immediately prior to such sale, specifying the time and place when said unclaimed lots or parcels of land will be sold, together with a description of the same as returned by the board of appraisers.

Bids, private sale.

(6640) § **17.** At the time and place appointed in said notice the board of education, corporate authorities or judge of the pro-

bate court shall offer for sale at public auction subject to competitive bids all the lots and parcels of land or so much thereof as may be considered for the best interests of the school district, returned by the report of said board of appraisers as unclaimed: *Provided,* That no bid shall be received for lot or parcel of land sold for a less sum than the appraised valuation, and such sale shall continue open from day to day until all such lots or parcels of land, or so much thereof as may be considered for the best interest of the school district, shall have been offered for sale. Any lots or parcels of land remaining unsold at the close of such sale for want of bids equal to the appraised valuation thereof may thereafter be sold at private sale by said board of education, corporate authorities or judge of probate court for a sum of money not less than the appraised valuation thereof, and not otherwise.

Purchaser shall pay for deed.

(6641) § **18.** Any purchaser at such sale, in addition to the amount of purchase money paid for any lot, lots or parcel of land, shall pay to the board of education, corporate authorities or judge of probate court the sum of two dollars as a fee for making, executing and acknowledging a deed of conveyance therefor, and all such lots or parcels of land purchased by any one person may be conveyed to such purchaser in one deed, which fee shall be in full for all charges of conducting sale, giving notice, appointing appraisers, etc.

Proceeds of sale, how applied.

(6642) § **19.** The proceeds derived from the sale of such lots or parcels of unclaimed land, after first paying the expenses of advertising, printing and a per diem of not more than three dollars per day to each member of the board of appraisers for the days actually and necessarily employed by them in making such appraisement and report as aforesaid, and other expenses actually and necessarily incurred in the proper conduct and management of such sale, shall be immediately turned over at the close of said sale by the board of education, corporate authorities or judge of the probate court to the treasurer of the school district, and by said treasurer placed to the credit of the school house fund of said school district, only to be disbursed and applied in the payment of outstanding bonds, warrants or other indebtedness against said school district, contracted or created in the erection or construction of school houses, procuring grounds or appurtenances therewith, if any such bonds, warrants or other indebtedness exists, otherwise to be applied and placed to the credit of the general school fund of the school district.

Surplus, how disposed of.

(6643) § **20.** In case there should be found any surplus on hand over and above receipts for fees and awards for expenses arising from the conveyances of lots as provided in section 6634, then such surplus shall so soon as ascertained by the corporate authorities or judge of the probate court be accounted for and turned over to the treasurer of the school district wherein such city or town may be situated, to be by such school district treasurer placed to the credit of the school house fund, then to be disbursed and applied as herein provided for the disbursement of the proceeds derived from the sale of unclaimed lots or parcels of land.

Expiration of term of office of person making entry of town site.

(6644) § **21**. Whenever the term of office of any corporate authorities or judge of the probate court having made entry of a townsite shall expire, or he or any one or more of said corporate authorities shall resign or be removed from office, he or they shall turn over all books and papers relative to such entry to his or their successor or successors in office, with full report of the condition of the trust and receipts and disbursements thereunder, and thereafter the said trust shall be executed in every particular by such successor or successors. Any wilful violations of the provisions of this act by the corporate authorities or judge of the probate court shall be held and considered a misdemeanor; any such corporate authorities or judge of the probate court wilfully making out a deed to any party not entitled to receive the same shall be deemed guilty of a misdemeanor; and any such corporate authorities or judge of the probate court wilfully misappropriating funds received by them in the execution of this trust shall be held guilty of embezzlement.

Appeals from townsite boards may be taken, where.

(6645) § **22**. That in all cases heretofore or hereafter tried before the boards of townsite commissioners in Oklahoma appointed by the Secretary of the Interior of the United States, appeals from the decisions of such boards may be taken to the district court of the county in which such decisions are made in the same manner as is provided by law for appeals from justices of the peace and the district court may on motion compel the boards of commissioners to transmit the papers and a transcript in each case appealed provided that in all cases in which decisions have heretofore been made by such boards, such appeals shall be taken within ninety days after the taking effect of this act, and in all other cases within thirty days from the date of the decision by the townsite commissioners.

Sections and numbers may be changed by publisher.

(6646) § **23**. When this act is published the sections thereof shall be re-numbered by the publisher and sections properly numbered, and where any section refers to any other section by number such references shall be changed by the publisher to correspond with the numbers of sections as re-numbered by him.

CHAPER LXXXVI.—TRANSFERS.

ARTICLE.
1. Transfer in general.
2. Transfer of real property.
3. Transfer of personal property.
4. Recording transfers.
5. Unlawful transfers.
6. Trusts in general.
7. Trusts for the benefit of third persons.

ARTICLE 1.—TRANSFER IN GENERAL.

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3. Any property may be transferred.
4. What not transferable.
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15. Relative force of parts.
16. Recitals clear doubts.
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19. Without issue, defined.
20. Requisites of fee.

Effect of Transfer.

SECTION.
21. Transfer vests actual title.
22. Thing includes incident.
23. Party not named.

Definition of transfer.

(6647) § **1.** Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

Consideration unnecessary, when

(6648) § **2.** A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general, except that a consideration is not necessary to its validity.

Any property may be transferred,

(6649) § **3.** Property of any kind may be transferred, except as otherwise provided by this and the next two sections.

What not transferable.

(6650) § **4.** A mere possibility, not coupled with an interest, cannot be transferred.

Right of re-entry only to principal owner

(6651) § **5.** A mere right of re-entry, or of re-possession for breach of a condition subsequent, cannot be transferred to any one except the owner of the property affected thereby.

Writing only when required

(6652) § **6.** A transfer may be made without writing in every case in which a writing is not expressly required by statute.

Grant defined

(6653) § **7.** A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant" in this and in the bal-

ance of this chapter includes all these instruments, unless it is specially applied to real property. Chap. 86.

Delivery.

(6654) § **8.** A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.

Date presumed.

(6655) § **9.** A grant duly executed is presumed to have been delivered at its date.

Delivery absolute.

(6656) § **10.** A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute; and the instrument takes effect thereupon discharged of any condition on which the delivery was made.

Delivery in escrow.

(6657) § **11.** A grant may be deposited by the grantor with a third person, to be delivered on the performance of a condition, and on delivery by the depositary, it will take effect. While in the possession of the third person and subject to condition, it is called an escrow.

Redelivery does not transfer.

(6658) § **12.** Re-delivering a grant of real property to the grantor or cancelling it, does not operate to re-transfer the title.

Constructive delivery.

(6659) § **13.** Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

First. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery: or,

Second. Where it is delivered to a stranger for the benefit of a grantee, and his assent is shown or may be presumed.

Interpertation of grants.

(6660) § **14.** Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided by this article.

Relative force of parts

(6661) § **15.** A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

Recitals clear doubts.

(6662) § **16.** If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

Grants interpreted in favor of grantee, exception.

(6663) § **17.** A grant is to be intrepreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

Former part prevails

(6664) § **18.** If the several parts of a grant are absolutely irreconcilable, the former part prevails.

Without issue defined.

(6665) § **19.** Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors or issue living at the death of the person named as ancestor.

Requisites of fee.

(6666) § **20.** Words of inheritance or succession are not requisite to transfer a fee in real property.

Vests actual title.

(6667) § **21.** A transfer vests in the transferee all the actual title to the thing transferred which the transferer then has, unless a different intention is expressed or is necessarily implied.

Thing include incident.

(6668) § **22.** The transfer of a thing transfers also all its inci-

dents unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

Party not named

(6669) § **23**. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

ARTICLE 2.—TRANSFER OF REAL PROPERTY.

Mode of Transfer.

SECTION.
1. Transfer by law or writing.
2. Seal abolished.
3. Form of grant.

Effect of Transfer.

SECTION.
4. All easements pass.
5. Warranties implied by grant.
6. Grant conclusive against whom
7. Grant valid *pro tanto*.
8. Title to highway.
9. Rights of tenants.
10. Presumptions, constructions, liens.

Transfer by law or writing

(6670) § **1**. An estate of real property other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Seal abolished.

(6671) § **2**. The execution of a grant of such estate in real property, if it is not duly acknowledged, must, to entitle the grant to be recorded, be proved by a subscribing witness, or as otherwise provided in section 6694. The absence of the seal of any grantor or his agent from any grant of an estate in real property heretofore or hereafter made shall not invalidate or in any manner impair the same.

Form of grant.

(6672) § **3**. A grant of an estate in real property may be made, in substance as follows:

This grant, made the.....day of.....in the year.... between A. B., of....., of the first part, and C. D., of .....of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part, in consideration of.....dollars, now received, all the real property situated in.....and bounded (or described) as follows: .....

Witness the hand of the party of the first part. A. B.

All easements pass.

(6673) § **4**. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

Warranties implied by grant.

(6674) § **5**. From the use of the word "grant" in any conveyance by which an estate of inheritance or fee-simple is to be passed, the following covenants, and none other, on the part of

the grantor for himself and his heirs to the grantee, his heirs and assigns are implied unless restrained by express terms contained in such conveyance:

First. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

Second. That such estate is at the time of the execution of such conveyance, free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Grant conclusive against whom

(6675) § **6**. Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under him, except a purchaser or incumbrancer who, in good faith, and for a valuable consideration, acquires a title or lien by an instrument that is first duly recorded.

Grant valid pro tanto

(6676) § **7**. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer does not work a forfeiture of his estate but passes to the grantee all the estate which the grantor could lawfully transfer.

Title to highway.

(6677) § **8**. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant.

Rights of tenants.

(6678) § **9**. Grants of rents, or revisions, or of remainders are good and effectual without attornments of the tenants, but no tenant, who, before notice of the grant, shall have paid rent to the grantor must suffer any damage thereby.

Presumptious constructions, liens.

(6679) § **10**. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of any person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

Second. A fee-simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

Third. An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.

Fourth. Where a person purports by proper instument to grant real property in fee-simple, and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

Fifth. Where a grant is made upon condition subsequent, and and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant must re-convey the property to the grantor or his successors, by grant duly acknowledged for record.

Sixth. The term "incumbrances" includes taxes, assessments, and all liens upon real property.

ARTICLE 3.—TRANSFERS OF PERSONAL PROPERTY.

Mode of Transfer.

SECTION.
1. Trusts and ships.
2. Other personalty.

What Operates as a Transfer.

SECTION.
3. Present transfer.
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5. Transfer by agent.

Gifts.

SECTION.
6. No consideration.
7. Delivery necessary.
8. Irrevocable.
9. Gift in view of death.
10. Presumed, when.
11. Gift in view of death revocable, when.
12. Will does not effect.
13. Deemed a legacy.

Trusts and ships.

(6680) § **1**. An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

Other personalty.

(6681) § **2**. The mode of transferring other personal property by sale is regulated by article 3 of chapter 60.

Present transfer.

(6682) § **3**. The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not.

Future transfer.

(6683) § **4**. Title is transferred by an executory agreement for the sale or exchange of personal property, only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the law on offer of performance.

Transfer to agent.

(6684) § **5**. Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter, while in posession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind, and does rescind the transfer made by him.

No consideration.

(6685) § **6**. A gift is a transfer of personal property, made voluntarily and without consideration.

Delivery necessary.

(6686) § **7**. A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

Irrevocable.

(6687) § **8**. A gift, other than a gift in view of death, cannot be revoked by the giver.

Gift in view of death.

(6688) § **9**. A gift in view of death is one which is made in contemplation, fear or peril of death, and with intent that it shall take effect only in case of the death of the giver.

(6689) § **10**. A gift made during the last illness of the giver or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death. Presumed when.

(6690) § **11**. A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time; but when the gift has been delivered to the donee, the rights of a *bona fide* purchaser from the donee before the revocation shall not be affected by the revocation. Is revocable, limitation.

(6691) § **12**. A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift. Will does not effect

(6692) § **13**. A gift in view of death must be treated as a legacy so far as relates only to the creditors of the giver. Deemed a legacy.

ARTICLE 4.—RECORDING TRANSFERS.

What May be Recorded.

SECTION.
1 Judgments and letters patent.
2. Prerequisites to record.
3 Proved instrument filed.
4. Creditors' trusts and liens

Mode of Recording.

SECTION.
5. When and where recorded.
6. Conveyances in unorganized counties.
7. Separate classes.
8. Duty of register.
9. Transfers of vessels.

Proof and Acknowledgment of Instruments.

SECTION.
10, Proof and acknowledgment within Territory.
11. Same within district, county or city.
12. Same within United States.
13. Same without the United States.
14. Requisites of acknowledgment.
15. Conveyance by married women.
16. Proof of execution when not acknowledged.
17. Subscribing witness must be personally known to officer.
18. Handwriting.
19. Facts to be proved.
20. Contents of certificates.
21. Forms of certificates.
22. Action to correct certificates.
23. Powers of officers.
24. Former laws apply.
25. Record and effect of former deeds.

Effect of Recording, or the Want Thereof.

SECTION.
26. First record valid.
27. Conveyance defined.
28. Requisites of revocation.
29. Effect of proved instruments.
30. Unrecorded instruments.

(6693) § **1**. Any instrument or judgment affecting the title to or possession of real property may be recorded under this article. Judgments and letters patent may be recorded.

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Second. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which said judgments were rendered, may be recorded without acknowledgment or further proof.

Third. Letters patent from the United States and final receivers' receipts from United States land offices may be recorded without acknowledgment or further proof.

Prerequisites to record.

(6694) § **2**. Before an instrument can be recorded, unless it belongs to the class provided for in either sections 6714 or 6693 its execution must be acknowledged by the person executing it, or, if executed by a corporation, by its president or secretary, or proved by a subscribing witness, or as provided in sections 6710 and 6711, and the acknowledgment or proof certified in the manner prescribed by sections from 3277 to 3292.

Proved instrument filed.

(6695) § **3**. An instrument proved and certified pursuant to sections 6710 and 6711 may be recorded in the proper office, if the original is at the same time deposited therein, to remain for public inspection, but not otherwise.

Creditor's trusts and liens

(6696) § **4**. Transfers of property in trust for the benefit of creditors, and transfers of or liens on property, by way of mortgage, are required to be recorded in the cases specified in the law on special relations of debtor and creditor, and the chapter on mortgages, respectively.

Where and when recorded.

(6697) § **5**. Instruments entitled to be recorded must be recorded by the register of deeds of the county in which the real property affected thereby is situated. The register must, in all cases, indorse the amount of his fee for the recording on the instrument recorded.

Second. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the register's office, with the proper officer, for record.

Conveyances in unorganized counties,

(6698) § **6**. The unorganized counties of the Territory in any judicial subdivision, are hereby attached to and made a part of the county where the court is held for such subdivision for the purpose of filing and recording all deeds, mortgages and other instruments, so long as such counties remain unorganized, and the filing and record of all such deeds, mortgages and other instruments heretofore made in the manner herein provided for are hereby declared to be legal and valid.

Separate classes.

(6699) § **7**. Grants, absolute in terms, are to be recorded in one set of books, and mortgages in another.

Duty of register.

(6700) § **8**. The duties of register of deeds, in respect to recording instruments, are prescribed by statute.

Transfers of vessels

(6701) § **9**. The mode of recording transfers of vessels, registered under the laws of the United States, is regulated by acts of congress.

Proof and acknowledgement within territory.

(6702) § **10**. The proof or acknowledgment of an instrument may be made at any place within this Territory, before a justice or clerk of the Supreme Court, or notary public.

Within judicial district county or city

(6703) § **11**. The proof or acknowledgment of an instrument may be made in this Territory within the judicial district,

county, subdivision or city, for which the officer was elected or appointed, before either:

First. A judge or clerk of a court of record; or,

Second. A mayor of a city; or,

Third. A register of deeds: or,

Fourth. A justice of peace; or,

Fifth. A United States circuit or district court commissioner; or,

Sixth. A county clerk; or,

Seventh. A county auditor.

Within United States

(6704) § **12.** The proof or acknowledgment of an instrument may be made without the Territory, but within the United States, and within the jurisdiction of the officer, before either:

First. A justice, judge, or clerk of any court of record of the United States.

Second. A justice, judge, or clerk of any court of record of any state or territory; or,

Third. A notary public; or,

Fourth. Any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

Fifth. A commissioner appointed for the purpose by the Governor of this Territory.

Without the United States.

(6705) § **13.** The proof or acknowledgment of an instrument may be made without the United States before either:

First. A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof of acknowledgment is made; or,

Second. A consul, vice-consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,

Third. A judge of a court of record of the country where the proof or acknowledgment is made; or,

Fourth. A notary public of such country.

When any of the officers mentioned in this article are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal.

Requisites of acknowledgment.

(6706) § **14.** The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument: or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

Conveyance by married woman.

(6707) § **15.** A conveyance or other instrument executed by a married woman, has the same effect as if she were unmarried, and may be acknowledged in the same manner.

Proof of execution when not acknowledged.

(6708) § **16.** Proof of the execution of an instrument, when not acknowledged, may be made either:

First. By the party executing it, or either of them; or,

Second. By a subscribing witness; or,

Third. By other witnesses, in cases mentioned in sections 6710 and 6711.

Subscribing witness must be personally known to officer,

(6709) § **17**. If, by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a creditable witness. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

Handwriting.

(6710) § **18**. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

First. When the parties and all the subscribing witnesses are dead; or,

Second. When the parties and all the subscribing witnesses are non-residents of the Territory; or,

Third. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,

Fourth. When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpœna or attachment; or,

Fifth. In case of the continued failure or refusal of the witness to testify, for the space of one hour, after his appearance.

Facts to be proved.

(6711) § **19**. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

First. The existence of one or more of the conditions mentioned therein; and,

Second. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

Third. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

Fourth. The place of residence of the witness.

Contents of certificate

(6712) § **20**. An officer taking proof of the execution of an instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him, on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their evidence.

Forms of certificates.

(6713) § **21**. An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed:

First. Such certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form:

TERRITORY OF.....OR STATE OF.....,
COUNTY OF..... } ss.

On this.....day of....., in the year....., before me personally appeared.....known to me or proved to me on the oath of..... to be the person who is described in, and who executed the within instrument, and acknowledged to me that he (or they) executed the same.

Second. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

TERRITORY OF.....
COUNTY OF..... } ss.

On this.....day of....., in the year....., before me (here insert the name and quality of the officer), personally appeared....., known to me (or proved to me on the oath of .....)to be the president (or the secretary) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

Third. The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

TERRITORY OF.....,
COUNTY OF..... } ss.

On this.....day of....., in the year....., before me (here insert the name and quality of the officer), personally appeared.....,known to me (or proved to me on the oath of.....) to be the person who is descrsbed in, and whose name is subscribed to the within instrument as the attorney in fact of.....and acknowledged to me that he subscribed the name of.....thereto as principal, and his own name as attorney in fact.

Fourth. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office; if by the laws of the Territory, state or county where the acknowledgement of proof is taken, or by authority of which they are acting, they are required to have official seals. Judges and clerks of courts of record must authenticate their certificates as aforesaid, by affixing thereto the seal of their proper court; and mayors of cities by the seal thereof.

Fifth. The certificate of proof or acknowldgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the district court, or of any other county court of record of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgement, was authorized to take the same, and that the clerk is acquainted with his handwriting; and believes that the signature to the original certificate is genuine.

(6714) § **22**. First. When the acknowlegment or proof of execution of an instrument is properly made, but defectively certified, any

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party interested may have an action in the district court to obtain a judgment correcting the certificate.

Second. Any person interested under an instrument entitled to be proved for record, may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

Third. A certified copy of the judgment in a proceeding instituted under either of the two preceding subdivisions, showing the proof of the instrument, and attached thereto, entitles the instrument to record, with like effect as if acknowledged.

Powers of officers.

(6715) § **23**. Officers authorized to take the proof of instruments are authorized in such proceedings:

First. To administer oaths or affirmations.

Second. To employ and swear interpreters.

Third. To issue subpœnas, and to punish for contempt, as provided in civil procedure in regard to the means of producing witnesses.

Former laws apply

(6716) § **24**. The legality of the execution, acknowledgment; proof, form, or record of any conveyance or other instrument made before this chapter goes into effect, executed, acknowledged, proved or recorded, is not affected by anything contained in this chapter, but depends for its validity and legality, except as to seals, upon the laws in force when the act was performed.

Record and effect of former deeds.

(6717) § **25**. All conveyances of real property made before this chapter goes into effect, and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with like effect as conveyances executed and acknowledged in pursuance of this chapter.

First record valid

(6718) § **26**. Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Conveyance defined.

(6719) § **27**. The term "conveyance," as used in the last section, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or incumbered, or by which the title to any real property may be affected, exept wills, executory contracts for the sale or purchse of real property, and powers of attorney.

Requisite of revocation

(6720) § **28**. No instrument containing a power to convey or execute instruments affecting real property, which has been rerecorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded in the same office in which the instrument containing the power was recorded,

Effect of proved instruments.

(6721) § **29**. The recording and deposit of an instrument proved and certified according to the provisions of sections 6695, 6708, 6709, 6710 and 6711, are constructive notice of the execu-

tion of such instrument to all purchasers and incumbrancers subsequent to the recording; but the proof, recording and deposit do not entitle the instrument, or the record thereof, or the transcript of the record, to be read in evidence.

Unrecorded instrument.

(6722) § **30**. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

ARTICLE 5.—UNLAWFUL TRANSFERS.

SECTION.
1. Fraudulent transfers.
2. Notice avoids fraud.
3. Constructive revocation.
4. Power deemed executed.
5. Good faith protected.
6. Adverse possession.
7. Other unlawful transfers.

Fraudulent transfers

(6723) § **1**. Every instrument other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrances thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof.

Notice avoids fraud.

(6724) § **2**. No instrument is to be avoided under the last preceding section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended.

Constructive revocation.

(6725) § **3**. Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of an estate to real property, is reserved to the grantor, or given to any other person, a subsequent grant of or charge upon the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer, for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

Power deemed executed.

(6726) § **4**. Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

Good faith protected

(6727) § **5**. The rights of a purchaser or incumbrancer in good faith and for value are not to be impared by any of the foregoing provisions of this chapter.

Adverse possession.

(6728) § **6**. Every grant of real property, other than one made by the Territory, or under a judicial sale, is void, if at the time of the delivery thereof, such real property is in the actual possession of a person claiming under a title adverse to that of the grantor.

Other unlawful transfers.

(6729) § **7**. Other provisions concerning unlawful transfers are contained in chapter 27.

ARTICLE 6.—TRUSTS IN GENERAL.

Nature and Creation of a Trust.

SECTION.		SECTION.	
1.	Classes of trusts.	6.	Purposes of a trust.
2.	Voluntary trusts.	7.	Creation of a trust as to trustor.
3.	Involuntary trusts.	8.	Same as to trustee
4.	Trustor and trustee.	9.	Trustee by his own wrong
5.	What constitutes a trustee	10.	Trustee by negligence

Obligations of Trustees.

SECTION.		SECTION.	
11.	Good faith of trustee.	17.	Violation is a fraud.
12	Not for his own profit.	18.	Presumption against trustee.
13.	May not take part in transactions.	19.	Mingling property.
14	Influence.	20.	Liability of trustee.
15.	Adverse trust.	21.	Same, good faith.
16.	Adverse interest.	22.	Acts of co-trustee.

Obligations of Third Persons.

SECTION.		SECTION.	
23.	Involuntary trustee.	24.	Third persons not prejudiced.

Classes of trusts.

(6730) § **1.** A trust is either:

First. Voluntary; or,

Second. Involuntary.

Voluntary trust.

(6731) § **2.** A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by one, for the benefit of another.

Involuntary trust.

(6732) § **3.** An involuntary trust is one which is created by operation of law.

Trustor and trustee.

(6733) § **4.** The person whose confidence creates a trust, is called the trustor, the person in whom the confidence is reposed, is called the trustee, and the person for whose benefit the trust is created, is called the beneficiary.

What constitutes a trustee.

(6734) § **5.** Every one who voluntarily assumes a relation of personal confidence with another, is deemed a trustee within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence obtains any control.

Purposes of a trust

(6735) § **6.** A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by article 6 of chapter 69 and this chapter.

Creation of a trust, as to trustor.

(6736) § **7.** Subject to the provisions of section 4186, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty;

First. An intention on the part of the trustor to create a trust; and,

Second. The subject, purpose and beneficiary of the trust.

Creation of trust as to trustee

(6737) § **8.** Subject to the provisions of section 4186 a volun-

tary trust is created, as to the trustee, by any words or acts of his, indicating with reasonable certainty:

First. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,

Second. The subject, purpose and beneficiary of the trust.

Trustee by his own wrong.

(6738) § **9.** One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

Trustee by negligence.

(6739) § **10.** One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

Trustee is bound to act in good faith.

(6740) § **11.** In all matters connected with his trust a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter, by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

Not for his own profit.

(6741) § **12.** A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

May not take part in any transactions, exceptions.

(6742) § **13.** Neither a trustee, nor any of his agents, may take part in any transaction concerning the trust, in which he, or any one for whom he acts as agent, has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

First. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so.

Second. When the beneficiary not having the power to contract, the district court, upon the like information of the facts, grants the like permission; or,

Third. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the district court for the latter, in the manner above prescribed.

Influence.

(6743) § **14.** A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

Adverse trust.

(6744) § **15.** No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

Adverse interest.

(6745) § **16.** If a trustee acquires any interest, or becomes charged with any duty adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

Violation is a fraud.

(6746) § **17.** Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of the trust.

Presumption against trustee.

(6747) § **18.** All transactions between a trustee and his beneficiary, during the existence of the trust, or while the influence ac-

quired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration and under undue influence.

Mingling property.

(6748) § **19.** A trustee who wilfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

Liability of trustee.

(6749) § **20.** A trustee who uses or disposes of the trust property, contrary to section 6741 may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds with interest.

Same, good faith.

(6750) § **21.** A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interest of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

Trustee responsible for acts of co-trustee when

(6751) § **22.** A trustee is responsible for the wrongful acts of a co-trustee, to which he consented, or which by his negligence he enabled the latter to commit, but for no others.

Involuntary trustees.

(6752) § **23.** Every one to whom property is transferred, in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith and for a valuable consideration.

Third persons not prejudiced by acts of trustee, when.

(6753) § **24.** One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof; and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

ARTICLE 7.—TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

Nature and Creation of a Trust.

SECTION.
1. Express trusts only.
2. Mutual consent necessary.
3. Appointed by the court.
4. Declaration of trust.
5. Declaration by trustor.

Obligation of Trustees.

SECTION.
6. Trustee must obey declaration.
7. Must use ordinary care.
8. Appointment of successor.
9. Investment by trustee.
10. Failure to invest.
11. Purchased claims.

Powers of Trustees.

SECTION.
12. Trustee is general agent.
13. Co-trustees must all act.
14. Discretionary powers.

Rights of Trustees.

SECTION.
15. Indemnification of trustee.
16. Same, compensation as an executor.
17. Involuntary trustee not included.

Termination of the Trust.

SECTION.
18. By fulfillment.
19. Cannot be revoked.
20. Office of trustee vacated, how.
21. Discharge of trustee.
22 Removal by the court.

Succession or Appointment of New Trustees.

SECTION.
23. Filling vacancy by court.
24. Trusts survives to co-trustees.
25. Powers of district court.

(6754) § **1.** The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators and guardians as such. Applies to express trusts only.

(6755) § **2.** The mutual consent of a trustor and trustee creates a trust, of which the beneficiary may take advantage at any time prior to its rescission. Mutual consent necessary.

(6756) § **3.** When a trustee is appointed by a court or public officer as such, such court or officer of the trustor within the meaning of the last section. Appointed by the court.

(6757) § **4.** The nature, extent and object of a trust are expressed in the declaration of trust. Declaration of trust.

(6758) § **5.** All declarations of a trustor to his trustees, in relation to the trust before its acceptance by the trustees or any of them are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein. All declarations deemed part of declaration of trust.

(6759) § **6.** A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner and to the same extent, as an employe. Trustee must obey declaration,

(6760) § **7.** A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust. Must use ordinary care.

(6761) § **8.** If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge. Appointment of successor.

(6762) § **9.** A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same. Investment by trustee.

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Failure to invest.

(6763) § **10.** If the trustee omits to invest the trust moneys according to the last section he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is wilful.

Purchased claims.

(6764) § **11.** A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

Trustee is a general agent.

(6765) § **12.** A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust, and by this chapter and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

Co-trustees must all act

(6766) § **13.** Where there are several co-trustees all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

Discretionary powers.

(6767) § **14.** A discretionary power, conferred upon a trustee, is prosumed not to be left to his arbitrary discretion, but may be controlled by the district court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

(6768) § **15.** A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures if they were productive of actual benefit to the estate.

Same compensation as an executor.

(6769) § **16.** When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified, and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances.

Involuntary trustee not included

(6770) § **17.** An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article.

Termination by fulfillment.

(6771) § **18.** A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

Trust cannot be revoked except, when

(6772) § **19.** A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

Office of trustee vacated how

(6773) § **20.** The office of a trustee is vacated:

First. By his death; or,

Second. By his discharge.

Discharge of trustee.

(6774) § **21.** A trustee can be discharged from his trust only as follows:

First. By the extinction of the trust.

Second. By the completion of his duties under the trust.

Third. By such means as may be prescribed by the declaration of the trust.

Fourth. By the consent of the beneficiary, if he has capacity to contract.

Fifth. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,

Sixth. By the district court.

Removal by court.

(6775) § **22**. The district court may remove any trustee who has violated or is unfit to execute the trust.

Filling vacancy by the court.

(6776) § **23**. The district court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment.

Trust survives to co-trustees.

(6777) § **24**. On the death, renunciation or discharge of one of several co-trustees, the trust survives to the others.

Powers of district court in relation to trusts

(6778) § **25**. When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the district court of the county or judicial subdivision where the trust property, or some portion thereof, is situated, must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

CHAPTER LXXXVII.—UNIVERSITY.

AN ACT to locate and establish the University of Oklahoma.

[Took effect December 19, 1890.]

SECTION.

1. Location, bond, land grant.
2. Board of regents.
3. Regents, powers and duties.
4. Regents, officers and meetings.
5. University, government of.
6. University funds, branch colleges.
7. Regents annual report.
8. Powers and duties.
9. University, object, departments, additional colleges
10. Causes of study.
11. Co-education; diploma and certificate.
12. Tuition, how regulated.
13. Regents expenses
14. Government, admission of students.
15. Instructor's salaries
16. $10,000 building fund.
17. Bonds issued, act void, warrants drawn.
18. Regents to receive grants, additions and bequests.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

Location, bond land grant.

(6779) § **1**. There is hereby established in this Territory, at Norman, in the county of Cleveland, an institution of learning by the name and style of the "University of Oklahoma:" *Provided*, That within thirty days after the passage and approval of this act there shall be executed and delivered to the Secretary of the Territory a good and sufficient bond to be approved by the Governor of the Territory, a bond in the sum of five thousand dollars, conditioned that there shall be conveyed to the Territory of Oklahoma by a good and sufficient warranty deed forty acres of land within one-half mile of Norman on which the University shall be located and established.

(6780) § **2**. The government of the University shall vest in a

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Board of regents.

board of regents, to consist of six members, five of whom to be appointed by the Governor, by and with the consent of the Council, and the Governor shall, during the term of his office, be a member of said board. The term of office of said regents shall be for four years, from and after their appointment, unless sooner removed by the Governor for cause; but appointment to fill vacancies before the expiration of term, shall be for the residue of the term only.

Regents, powers and duties

(6781) § **3.** The board of regents and their successors in office shall constitute a body corporate, by the name of "The Regents of the University of Oklahoma," and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and all other property of the university. The board shall elect a president and a secretary, who shall perform such duties as may be prescribed by the laws of the board. The secretary shall keep a faithful record of all the transactions of the board, and of the executive committee thereof, and in addition to performing the duties of secretary, shall be the superintendent of the buildings and grounds of the university, and discharge such other duties as may from time to time be prescribed by the board of regents. The Territorial Treasurer shall be the treasurer of the board and perform all the duties of such office, subject to such regulations as the board may adopt, not inconsistent with his official duties, and he and his sureties shall be liable on his official bond as Territorial Treasurer for the faithful discharge of such duties.

Regents, officers and meetings.

(6782) § **4.** The time for the election of the president and secretary of said board, and the duration of their respective terms of office, and the time for holding the regular annual meeting and such other meetings as may be required, and the manner of notifying the time, shall be determined by the board. Three members shall coustitute a quorum for the transaction of business, but a less number may adjourn from time to time.

University, government of.

(6783) § **5.** The board of regents shall enact laws for the government of the University in all its branches, elect a president and the requisite number of professors, instructors, officers and employes, and fix the salaries and term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction, but no instruction either sectarian in religion or partisan in politics shall ever be allowed in any department of the University, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of regents, or in the election of professors or other officers of the University, or in the admission of students thereto, or for any purpose whatever. The board of regents shall have power to remove the president or any professor, instructor or officer of the University when in their judgment the interests of the University require it. The board may prescribe rules and regulations for the management of the libraries, cabinet, museum, labratories and all other property of the University, and of the several departments, and

for the care and preservation thereof, with penalties and forfeitures by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction of such actions.

University fund, branch colleges

(6784) § **6**. The board of regents are authorized to expend such portion of the income of the University fund as they may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets, and additions thereto, and if they deem it expedient, may receive in connection with the University any college in this Territory, upon application of its board of trustees, and such college so received shall become a branch of the University, and be subject to the visitation of the regents.

Regent's annual report.

(6785) § **7**. At the close of each fiscal year the regents, through their president. shall make a report in detail to the Governor, exhibiting the progress, condition and wants of each of the colleges embraced in the University, the course of study in each, the number of professors and students, the amount of receipts and disbursments, together with the nature, costs, and results of all important investigations and experiments, and such other information as they may deem important, one copy of which shall be transmitted free by the Governor of the Territory to all colleges endowed under the provisions of the act of Congress entitled "An Act donating land to the several states and territories which provide colleges for the benefit of agriculture and mechanic arts," approved July, eighteen hundred and sixty-two, and also one to the Secretary of the Interior as provided in said act.

President, powers and duties.

(6786) § **8**. The president of the University shall be president of the several faculties, and the executive head of the instructional force in all its departments; as such, he shall have authority, subject to the board of regents, to give general direction to the instruction and scientific investigations of the several colleges; and so long as the interests of the institution require it he shall be charged with the duties of one of the professorships. The immediate government of the several colleges shall be intrusted to their respective faculties, but the regents shall have the power to regulate the course of instruction and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in Universities, or as they shall deem appropriate, and to confer upon the faculty, by by-laws, the power to suspend or expel students for misconduct or other causes prescribed in such by-laws.

University, object, departments, additional colleges.

(6787) § **9**. The object of the University of Oklahoma shall be to provid ethe means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial and professional pursuits, in the instruction and training of persons in the theory and art of teaching, and also instruction in the fundamental laws of the United States and of this Territory, in what regards the rights and duties of citizens, and to this end, it shall consist of the following colleges or departments, to-wit:

First. The college or department of arts;

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Second. The college or departments of letters;

Third. The normal college or department;

Fourth. Such professional or other colleges or departments as now are or may from time to time be added thereto or connected therewith, and the board of regents are hereby authorized to establish such professional and other colleges or departments when in their judgment they may be deemed necessary and proper: *Provided*, That no money shall be expended by the board of regents in establishing and organizing any of the additional colleges or departments provided for in this section until an appropriation therefor shall have first been made.

Courses of study.

(6788) § **10**. The college department of arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to the industrial arts, such as agriculture, mechanics, engineering, mining and metallurgy, manufactures, architecture and commerce, and such branches included in the college of letters as shall be necessary to proper fitness of the pupils in the scientific and practical courses for their chosen pursuits and military tactics; in the normal department the proper instruction and learning in the theory and art of teaching, and in all the various branches and subjects needful to qualify for teaching in the common schools; and as soon as the income of the University will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their application to the practical arts shall be expanded into distinct colleges of the University, each with its own faculty and appropriate titles. The college of letters shall be co-existent with the college of arts, and shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the college of arts as the regents of the University shall prescribe,

Co-education, diploma and certificate.

(6789) § **11**. The university shall be open to female as well as male students, under such regulations and restrictions as the board of regents may deem proper, and all able bodied male students of the university in whatever college may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the Territory. After any person has graduated at the university and after such graduation has successfully taught a public school in this Territory for sixteen school months, the Superintendent of Public Instruction shall have authority to countersign the diploma of such teacher after such examination as to moral character, learning and ability to teach as to said superintendent may seem proper and reasonable. Any person holding a diploma granted by the board of regents of the Territorial University of Oklahoma, certifying that the person holding the same is a graduate of said university, shall after his diploma has been countersigned by the Territorial Superintendent of Public Instruction as aforesaid be deemed qualified to teach any of the public schools of this Territory, and such diploma shall be a certificate of such qualifications until annulled by the Superintendent of Public Instruction.

(6790) § **12**. No student who shall have been a resident of

the Territory for one year next preceding his admission shall be required to pay any fees for tuition in the University, except in the law department and for extra studies. The regents may prescribe rates of tuition for any pupil in the law department, or who shall not have been a resident as aforesaid, and for teaching extra studies.

Tuition, how regulated.

(6791) § **13**. The regents shall each receive the actual amount of expenses in travelling to and from and attendance upon all meetings of the board, or incurred in the performance of any duty in pursuance of any direction of the board, accounts for such expenses, duly authenticated, shall be audited by the board and paid on their order by the treasurer of the University out of the University fund income. No regent shall receive any pay, mileage or per diem except as above described.

Regent's expenses.

(6792) § **14**. The said board of regents shall make rules, regulations and by-laws for the good government and management of the University and of each department thereof; prescribe rules and regulations for the admission of students; but every applicant for admission shall undergo an examination to be prescribed by the board, and shall be rejected if it shall appear that he or she is not of good moral character; require any applicant for admission in the normal department, other than such as shall prior to admission sign and file with said board, a declaration of intention to follow the business of teaching common schools in this Territory for at least one year, to pay or cause to be paid such fees for tuition as the board may deem proper and reasonable.

Government, admission.

(6793) § **15**. The board of regents shall from time to time fix the salary of the president, professors and teachers of said University, and shall certify the same to the Territorial Auditor to draw warrants on the Territorial Treasurer upon the certificate of the secretary of said board of regents, that the amount is due for such salary fixed by said board, and that the services therein mentioned were actually performed.

Instructors salaries.

(6794) § **16**. The said county of Cleveland shall within six months after the passage and approval of this act provide, by sale of bonds or otherwise, the sum of ten thousand dollars, which sum shall be placed in the hands of the Territorial treasurer, to be by him held for the use of the board of regents for the purpose of erecting the buildings and procuring the apparatus necessary to put the Territorial University in operation.

Ten thousand dollar building fraud,

(6795) § **17**. The said board of regents shall be authorized to draw warrants upon any University funds in the hands of the Territorial treasurer, and it shall be the duty of that officer to pay out such funds on the warrants drawn by the regents of such institution. The county commissioners of Cleveland county are hereby authorized to issue bonds of said county in the sum of ten thousand dollars, running twenty years, and bearing five per cent interest which bonds shall not be sold below par, and when sold the proceeds of such sale of bonds shall be placed in the hands of the Territorial treasurer for the benefit of said University to be used as provided in section sixteen of this act: *Provided*, that before the commissioners shall issue or sell said bonds the question "shall Cleveland

Bonds issued, act void, warrants drawn

Chap. 88. County, Oklahoma Territory, by and through its commissioners, issue and sell bonds of the county bearing five per cent interest running twenty years in the sum of ten thousand dollars, for University funds," must be submitted to a vote of the people of said County at either a general or special election, and if a majority of the qualified voters vote in favor of the proposition then the commissioners aforesaid may issue the bonds, and if a majority vote against the proposition, then the authority imposed by the section is null and void: *Provided*, That if the said County of Cleveland, through its commissioners, shall neglect or refuse to comply with the conditions imposed in this and the preceding section, within one year, from and after the passage and approval of this act, then this act shall be null and void. All warrants drawn on the Territoril University funds shall be signed by the president of the board of regents, countersigned by the secretary and presented to the Territorial auditing officer, and be by him approved, signed and sealed before the Territorial Treasurer shall pay the same.

Regents to receive bequests.

(6796) § **18.** The board of regents of the University of Oklahoma are hereby authorized to receive all grants, additions, all bequests of money, or other property for the use and benefit of the University.

CHAPTER LXXXVIII.—WILLS AND SUCCESSION.

ARTICLE.
1. Execution and revocation of wills.
2. Intrepretation of wills.
3. General provisions relating to wills.
4. Succession.

ARTICLE 1.—EXECUTION AND REVOCATION OF WILL.

SECTION.
1. Who may make a will.
2. Married women have same right.
3. Undue influence.
4. What may be disposed of in will.
5. May be made to any one capable of taking.
6. Nuncupative will.
7. Mutual will.
8. Probate of conditional will.
9. Execution of wills, olographic.
10. Nuncupative will need not be in writing.
11. Method of witnessing a will.
12. Codicil, effect of.
13. Law of place governs.
14. Law must be followed.
15. Change of domicile.
16. Deposited wills.
17. How disposed of.
18. Probate judge opens will
19. Proof of lost will.
20. Revocation of wills.
21. Proof of destruction.
22. Effect of partial erasure.
23. Revocation of will in duplicate.
24. Wills valid.
25. Revocation of subsequent will does not revive.
26. Marriage and issue after will made.
27. Marriage of woman revokes will.
28. Sale of devised property.
29. Incumbrance not a revocation.
30. Partial disposal after will.
31. When such act revokes will.
32. Codicils.
33. Succession supplements will.
34. Devisee's descendants take property.
35. Gift to a witness is void.
36. Not if he be entitled to a share.
37. Probate of a will not prevented by subsequent incompetency of witness.
38. Property acquired after will.

Who may make a will.

(6797) § **1.** Every person over the age of eighteen years, of sound mind, may by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in article 4 of this chapter, being chargeable in both

cases with the payment of all the decedent's debts, as provided in civil procedure.

Married woman same right.

(6798) § **2**. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

Undue influence

(6799) § **3**. A will or part of a will procured to be made by duress, menace, fraud or undue influence, may be denied probate; and a revocation procured by the same means, may be declared void.

What may be disposed of by will.

(6800) § **4**. Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will.

May be made to any one capable of taking.

(6801) § **5** A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by its charter or by statute so to take.

Nuncupative will

(6802) § **6**. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

First. The estate bequeathed must not exceed in value the sum of one thousand dollars.

Second. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

Third. The decedent must at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear or peril of death, or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

Mutual will

(6803) § **7** A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will.

Probate of conditional will.

(6804) § **8**. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

Execution of wills, olographic

(6805) § **9**. An olographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this Territory, and need not be witnessed. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will and a nuncupative will, must be executed and attested as follows:

First. It must be subscribed at the end thereof by the testator himself, or some person, in his presence and by his direction, must subscribe his name thereto.

Second. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority.

Third. The testator must, at the time of subscribing or ac-

knowledging the same, declare to the attesting witnesses that the instrument is his will; and,

Fourth. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence.

Nuncupative need not be in writing,

(6806) § **10**. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

Method of witnessing a will.

(6807) § **11**. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

Codicil effect of

(6808) § **12**. The execution of a codicil referring to a previous will has the effect to republish the will as modified by the codicil.

Law of place governs.

(6809) § **13**. A will of real or personal property, or both, or a revocation thereof, made out of this Territory by a person not having his domicile in this Territory, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this Territory, and according to the provisions of this article.

Law must be followed

(6810) § **14**. No will or revocation is valid unless executed either according to the provisions of this article, or according to the law of the place in which it was made, or in which the testator was at the time domiciled.

Change of domicile,

(6811) § **15**. Whenever a will or a revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated as to the validity of its execution, by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place, by the law of which such will would be void.

Deposited wills

(6812) § **16**. Every probate judge must deposit in his office any will delivered to him for that purpose, and give a written receipt to the depositor; and must enclose such will in a sealed wrapper, so that it cannot be read, and indorse thereon the name of the testator, his residence, and the date of the deposit; and such wrapper must not be opened until its delivery under the provisions of the next section.

How disposed of.

(6813) § **17**. A will deposited under the provisions of the last section must be delivered only:

First. To the testator in person.

Second. Upon his written order, duly proved by the oath of a subscribing witness.

Third. After his death, to the person, if any, named in the indorsement on the wrapper of the will; or,

Fourth. If there is no such indorsement, and if the will was not deposited with the probate judge having jurisdiction of its probate, then to the probate judge who has jurisdiction.

Probate judge opens wills

(6814) § **18**. The probate judge with whom a will is deposited, or to whom it is delivered, must, after the death of the testa-

tor, publicly open and examine the will and file in his office, there to remain until duly proved, or to deliver it to the probate judge having jurisdiction of its probate.

Proof of lost will.

(6815) § **19**. A lost or destroyed will of real or personal property, or both, may be established in the cases provided in chapter 19, or any act in force on that subject.

Revocation of wills

(6816) § **20**. Except in the cases in this article mentioned no written will, nor any part thereof, can be revoked or altered otherwise than:

First. By a written will or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

Second. By being burnt, torn, cancelled, obliterated or destroyed, with intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

Proof of destruction.

(6817) § **21**. When a will is cancelled or destroyed by any other person than the testator the direction of the testator, and the fact of such injury or destruction must be proved by two witnesses.

Effect of partial erasure

(6818) § **22**. A revocation by obliteration on the face of the will may be partial or total, and is complete if the material part is so obliterated as to show an intention to revoke; but where, in order to effect a new disposition the testator attempts to revoke a provision of the will by altering or obliterating it on the face thereof, such revocation is not valid unless the new disposition is legally effected.

Revocation of will in duplicate

(6819) § **23**. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

Wills valid.

(6820) § **24**. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Revocation of subsequent will does not revive former without express terms

(6821) § **25**. If, after making a will, the testator duly makes and executes a subsequent will, the destruction, canceling or revocation of the latter does not revive the former, unless it appears by the terms of such revocation that it was his intention to remove the former will, or unless after such destruction, canceling or revocation, he duly republishes the prior will.

Marriage and issue after will is made

(6822) § **26**. First. If, after having made a will, the testator marries and has issue of such marriage, born either in his life-time or after his death, and the wife or issue survive him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Second. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is

provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

Marriage of woman revokes will.

(6823) § **27**. A will executed by an unmarried woman is revoked by a subsequent marriage, and is not revived by the death of her husband.

Sale of devised Property, effect.

(6824) § **28**. An agreement made by a testator, for the sale or transfer of property disposed of by will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise, against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Incumbrance not a revocation.

(6825) § **29**. A charge or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed, but the devise and legacies therein contained must pass subject to such charge or incumbrance.

Partial disposal after will.

(6826) § **30**. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

When such act revokes a will

(6827) § **31**. If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will, expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency, by reason of which they do not take effect.

Codicils.

(6828) § **32**. The revocation of a will revokes all its codicils.

Succession supplements will

(6829) § **33**. Whenever a testator has a child born after the making of his will, either in his life time or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate:

First. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator, as if he had died intestate, and succeeds thereto as provided in the preceding paragraph.

Second. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in a will as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be

taken from all the devisees, or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest or other provision in the will, would thereby be defeated; in such case such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Third. If such children, or their decendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's life time, by way of advancement, they take nothing in virtue of the provisions of the three preceding subdivisions.

Fourth. Every devise of land in any will conveys all the estate of their devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

Devisee's descendants take property.

(6830) § **34**. When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

Gift to a witness void.

(6831) § **35**. All beneficial devises, legacies or gifts whatever, made or given in any will to a subscribing witness thereto, are void unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to the will.

Not if he is entitled to share.

(6832) § **36**. If a witness to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

Probate of will not prevented by subsequent incompetency of witness.

(6833) § **37**. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

Property acquired after will.

(6834) § **38**. Any estate, right or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms, devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

Chap. 88. ARTICLE 2.—INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

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17.	Residue of personalty.	35.	Gifts do not reduce legacies
18.	Effect of certain terms.		

Intention of testator governs

(6835) § **1.** A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

Will excludes all oral declarations

(6836) § **2.** In case of uncertainty, arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

Rules of interpretation

(6837) § **3.** In interpreting a will, subject to the laws of this Territory, the rules prescribed by the following sections of this article are to be observed, unless an intention to the contrary clearly appears.

Construed together if several.

(6838) § **4.** Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

Irreconcilable parts

(6839) § **5.** All the parts of a will are to be construed in relation to each other, and so as if possible to form one consistent whole, but where several parts are absolutely irreconcilable, the latter must prevail.

Inaccuracies

(6840) § **6.** A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

Ambiguities

(6841) § **7.** Where the meaning of any part of a will is ambiguous or doubtful it may be explained by any reference thereto, or recital thereof, in another part of the will.

Words taken in ordinary sense.

(6842) § **8.** The words of a will are to be taken in their ordinary and grammatical sense unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

Construction.

(6843) § **9.** The words of a will are to receive an interpretation which will give to every expression some effect rather than one which shall render any of the expressions inoperative.

Validity.

(6844) § **10**. Of two modes of interpreting a will that is to be preferred which will prevent a total intestacy.

Technical words

(6845) § **11**. Technical words in a will are to be taken in their technical sense unless the context clearly indicates a contrary intention.

Not necessary

(6846) § **12**. Technical words are not necessary to give effect to any species of disposition by a will.

Words of inheritance.

(6847) § **13**. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

Executing power.

(6848) § **14**. Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of the testator.

General words.

(6849) § **15**. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

Residue of real estate

(6850) § **16**. A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

Residue of personalty

(6851) § **17**. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death not otherwise effectually bequeathed by his will.

Effect of certain terms.

(6852) § **18**. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest," or "next of kin," of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person according to the provisions of the article on succession, in this chapter.

Words of donation

(6853) § **19**. The terms mentioned in the last section are used as words of donation, and not limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

Postponed possession.

(6854) § **20**. Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

Class includes all

(6855) § **21**. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

Conversion of realty

(6856) § **22**. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property, from the time of the testator's death.

(6857) § **23**. A child conceived before, but not born until

after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

Unborn child included

Imperfection not orally removed.

(6858) § **24**. When applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intention cannot be received.

Vest at death

(6859) § **25**. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

Divested, when.

(6860) § **26**. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

Death of devisee causes failure.

(6861) § **27**. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section 6830.

Not of persons in remainder.

(6862) § **28**. The death of a devisee or legatee of a limited interest, before the testator's death, does not defeat the interests of persons in remainder, who survive the testator.

Uncertain event.

(6863) § **29**. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

Condition precedent

(6864) § **30**. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

Unknown or unavoidable event.

(6865) § **31**. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled except where such fulfilment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

Substantial compliance.

(6866) § **32**. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

Condition subsequent

(6867) § **33**. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

Owners in common

(6868) § **34**. A devise or legacy given to more than one person vests in them as owners in common.

Gifts do not reduce legacies;

(6869) § **35**. Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

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5. Preferred legacies.
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8 Proved devise impairs deed by heir
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16 Void authority.
17. Executor's power begins.
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21. Liability of devisees and legatees.

(6870) § **1**. Legacies are distinguished and designated, according to their nature, as follows: Legacies classed.

First. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator is specific; if such legacy fails, resort cannot be had to the other property of the testator.

Second. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails in whole or in part, resort may be had to the general assets as in case of a general legacy.

Third. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy

Fourth. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

Fifth. All other legacies are general legacies.

(6871) § **2**. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this chapter and under civil procedure. Non-exempt property is assets.

(6872) § **3**. The property of a testator, except as otherwise especially provided in this chapter and under civil procedure must be resorted to for the payment of debts in the following order: Order in which property applied to debts.

First The property which is expressly appropriated by the will for the payment of the debts.

Second. Property not disposed of by the will

Third. Property which is devised or bequeathed to a residuary legatee.

Fourth. Property which is not specifically devised or bequeathed, and,

Fifth. All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for

(6873) § **4**. The property of a testator, except as otherwise specially provided in this chapter and under civil procedure, must be resorted to for the payment of legacies in the following order: For payment of legacies.

First. The property which is expressly appropriated by the will for the payment of the legacies.

Second. Property not disposed of by the will.

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Third. Property which is devised or bequeathed to a residuary legatee.

Fourth. Property which is specifically devised or bequeathed.

Preferred legacies

(6874) § **5**. Legacies to husband, widow or kindred of any class, are chargeable only after legacies to persons not related to the testator.

Class only affected

(6875) § **6**. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

Representative may sell.

(6876) § **7**. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the probate court to sell the property devised or bequeathed, in the cases herein provided.

Proved devise impairs deed by heir

(6877) § **8**. The rights of a purchaser or incumbrancer of real property in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the probate court having jurisdiction thereof, or unless written notice of such devise is filed with the probate judge of the county where real property is situated, within four years after the devisor's death.

Succession to limited devises

(6878) § **9**. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative as the case may be.

Income after death.

(6879) § **10**. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

Satisfied before death

(6880) § **11**. A legacy, or a gift in contemplation, fear or peril of death, may be satisfied before death.

Due in one year.

(6881) § **12**. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

Interest after due

(6882) § **13**. Legacies bear interest from the time when they are due and payable, except that legacies for maintainance, or to the testator's widow, bear interest from the testator's decease.

Intention controls

(6883) § **14**. The four preceding sections are in all cases to be controlled by a testator's express intention.

Unnamed executor

(6884) § **15**. Where it appears by the terms of a will that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

Void authority

(6885) § **16**. An authority to an executor to appoint an executor, is void.

Executor's power begins.

(6886) § **17**. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may

pay funeral charges and take necessary measures for the preservation of the estate.

Limitation of power

(6887) § **18.** No executor of an executor, as such, has any power over the estate of the first testator.

Will includes codicil.

(6888) § **19.** The term "will," includes all codicils as well as wills.

Law of place.

(6889) § **20.** Except as otherwise provided, the validity and interpretation of wills is governed, when relating to real property within this territory, by the law of this Territory; when relating to personal property, by the law of the testator's domicile.

Liability of devisees and legatees.

(6890) § **21.** Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by civil procedure, or special statutes.

ARTICLE 4.—SUCCESSION.

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18 Inheritance by representation
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Succession defined

(6891) § **1.** Succession is the coming in of another to take the property of one who dies without disposing of it by will.

All property passes to heirs.

(6892) § **2.** The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purpose of administration.

Order of succession

(6893) § **3.** When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the chapter on probate court, subject to the payment of his debts, in the following manner:

First. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take according to the right of representation. If

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the decedent leave no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

Second. If the decedent leave no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father. If there be no father, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if he leave a mother also, she takes an equal share with the brothers and sisters. If decedent leave no issue, nor husband nor wife, the estate must go to the father.

Third. If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if a mother survive, she takes an equal share with the brothers and sisters.

Fourth If the decedent leave no issue, nor husband, nor wife, nor father, and no brother or sister is living at the time of his death, the estate goes to his mother to the exclusion of the issue, if any, of deceased brothers or sisters.

Fifth. If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

Sixth. If the decedent leave no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote. However:

Seventh. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent decends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Eighth. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

Ninth. If the decedent leave no husband, wife, or kindred, the estate escheats to the Territory for the support of common schools.

(6894) § **4.** Dower and courtesy are abolished. Dower and courtesy abolished.

(6895) § **5.** Every illegitimate child is an heir of the person who in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate. Inheritance by illegitimate child.

(6896) § **6.** If an illegitimate child, who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law. Inheritance from illegitimate child.

(6897) § **7.** The degree of kindred is established by the number of generations, and each generation is called a degree. Each generation is a degree.

(6898) § **8.** The series of degrees from the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity. Lineal and collateral

(6899) § **9.** The direct line is divided into a direct line descending and the direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that which connects a person with those from whom he descends. Ascending and descending

(6900) § **10.** In the direct line there are as many degrees as there are generations. Thus the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons. Direct line degrees

(6901) § **11.** In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus brothers are related in the second degree, uncle and nephew in the third degree, cousins german in the fourth degree, and so on. Collateral degree.

(6902) § **12.** Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise or gift of some one Kindred of the half-blood.

of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

Advancements part of share.

(6903) § **13**. Any estate, real or personal, given by the decedent in his life time, as an advancement to any child or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child, or other lineal descendant, toward his share of the estate of the decedent.

Excess not refunded

(6904) § **14**. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

Advancements defined

(6905) § **15**. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

Expressed value governs

(6906) § **16**. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise it must be estimated according to its value when given, as nearly as the same can be ascertained.

Representation

(6907) § **17**. If any child or other lineal descendant receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

Inheritance by representation

(6908) § **18**. Inheritance or succession by right of representation takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Aliens may take.

(6909) § **19**. Aliens may take in all cases, by succession, as well as citizens; and no person, capable of succeeding under the provisions of this title, is precluded from such succession by reason of the alienage of any relative.

Escheated estates

(6910) § **20**. If there is no one capable of succeeding under the preceding sections, and the title fails from a defect of heirs, the property of a decedent devolves and escheats to the Territory; and an action for the recovery of such property, and to reduce it into the possession of the Territory, or for its sale and conveyance may be brought by the district attorney in the district court of the county or judicial subdivision in which the property is situated.

Real property subject to charges.

(6911) § **21**. Real property passing to the Territory under the preceding section, whether held by the Territory or its gran-

tees, is subject to the same charges and trusts to which it would have been subject if it had passed by succession.

Liabilities of heirs.

(6912) § **22.** Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by chapter 19.

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The fact that only four days time could be given to indexing rendered it absolutely impossible to index the entire volume, and the compilers adopted the following as the only means of meeting the emergency.

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ERRATA.

In general section 4382, on page 813, the words "section ninety" should read "section 4378 "
In general section 2876, on page 576, the word "and" in line 38 should be where the word "find" is in line 39, and "find" should be where "and" is in line 38.
In general section 4669, on page 856, the word "bond" should be added to the section.
Section 20, Article 27, on page 888, should read "reception" instead of "surrender."
Section 2, Article 7, on page 806, should read, "insane" instead of "same."
Section 4, Article 35, on page 913, should read, "necessary," instead of "unnecessary."
Section 18, Article 24, on page 853, should read, "approved" instead of "appealed."
Section 16, Article 16, on page 834, should read "restriction" instead of "restitution."
In Section 41, Article 23, on page 847, the words "ten years," should be ommitted.
In Section 1936, "chapter" should read "article."
In Section 3503, "sergeant" should read "surgeon,"
In the first line of Section 3504, "to" should read "or."